



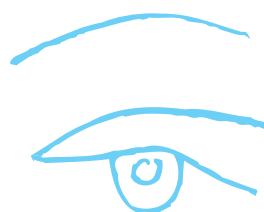
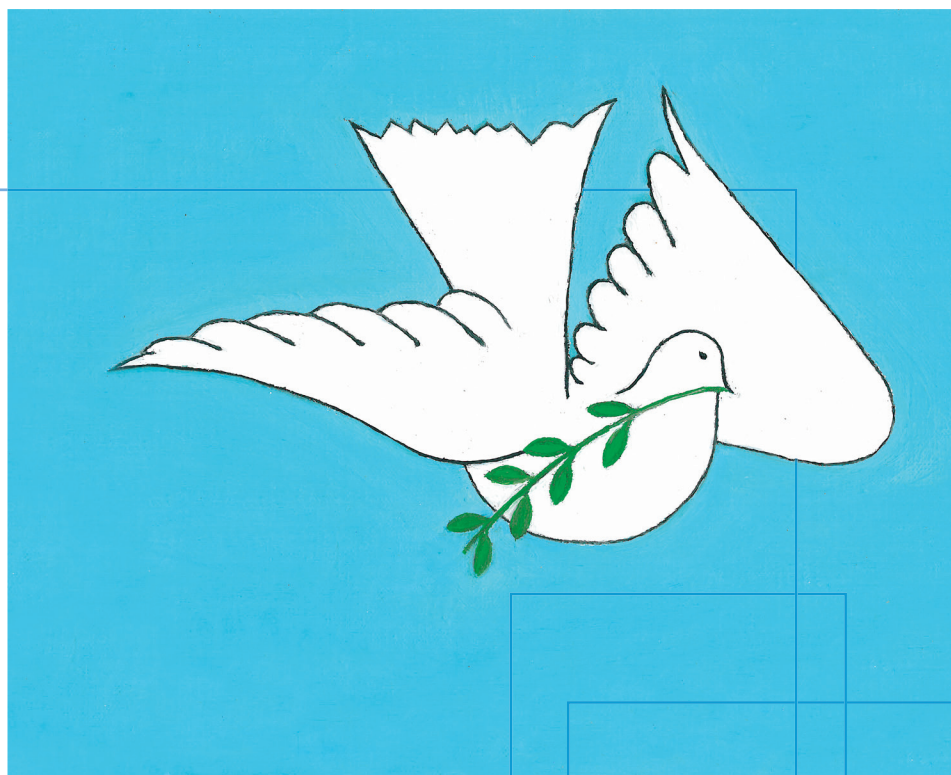
International  
Labour  
Office

Geneva



**101<sup>st</sup>**  
Session of the  
International  
Labour Conference

*Building  
a future with  
decent work*



# Giving globalization a human face

INTERNATIONAL LABOUR CONFERENCE  
101st SESSION, 2012

**International Labour Conference, 101st Session, 2012**

**General Survey on the fundamental Conventions  
concerning rights at work in light of the ILO  
Declaration on Social Justice for a Fair Globalization, 2008**

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

**Report of the Committee of Experts  
on the Application of Conventions and Recommendations  
(articles 19, 22 and 35 of the Constitution)**

**Report III (Part 1B)**

# **Giving globalization a human face**

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# Part I. Introduction

## Chapter 1

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### Preliminary comments

1. In March 2010, at its 307th Session, the Governing Body of the International Labour Organization decided that the recurrent item on the agenda of the 101st Session (2012) of the International Labour Conference should address the ILO strategic objective of promoting and realizing fundamental principles and rights at work.<sup>1</sup> In light of both the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and the ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration) of 2008, the Governing Body considered the fundamental principles and rights at work which are set out in the related fundamental ILO Conventions as being mutually supportive rights which logically would best be considered in a holistic manner. The four categories of fundamental principles and rights at work are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

2. Moreover, in an effort to align the General Survey of the Committee of Experts on the Application of Conventions and Recommendations with the recurrent item report, the Governing Body decided that the General Survey would cover the eight fundamental Conventions:

- ❑ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- ❑ Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- ❑ Forced Labour Convention, 1930 (No. 29);
- ❑ Abolition of Forced Labour Convention, 1957 (No. 105);
- ❑ Minimum Age Convention, 1973 (No. 138);
- ❑ Worst Forms of Child Labour Convention, 1999 (No. 182);
- ❑ Equal Remuneration Convention, 1951 (No. 100); and
- ❑ Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The principles and values embodied in these Conventions constitute a universal aspiration of the international community as a whole.

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<sup>1</sup> GB.307/LILS/4.

3. Therefore, this General Survey, which deals with all eight fundamental Conventions, seeks to give a global picture of the law and practice in member States in terms of the practical application of ratified and non-ratified Conventions, describing the various positive initiatives undertaken in some countries, in addition to certain serious problems encountered in the implementation of their provisions. The General Survey recognizes the interdependence and complementarity between these Conventions and their universal applicability, while bearing in mind the specificities covered by each Convention. The General Survey also highlights the main considerations elaborated by the Committee of Experts, as well as its corresponding guidance in order to achieve fuller conformity with the fundamental Conventions. The General Survey seeks to do this by analysing the scope, methods and difficulties of application for all eight Conventions, the most salient thematic features pertaining to each Convention, as well as their enforcement and impact. It also hopes to provide guidance to member States in the steps they can take to close the implementation gaps that have been identified in the ongoing dialogue with them. The rights covered by these Conventions are of universal application requiring respect from all countries even where they have not been ratified.<sup>2</sup> However, ratification of these Conventions is testimony to the commitment of ratifying States and provides value added in offering certainty concerning the standards and transparency in their monitoring and implementation process. Ratification of the Conventions also opens the door to direct enforcement of the relevant standards through the judicial systems in some countries. The General Survey examines the barriers to ratification faced by member States, as well as the provision of technical assistance to overcome such obstacles and prospects for ratification. In this regard, out of 183 member States, 135 have ratified all eight fundamental Conventions. Therefore, 48 member States have yet to complete ratification of all eight Conventions. These include member States with the highest populations. Hence the importance in undertaking this General Survey is to provide guidance to non-ratifying member States with regard to obstacles to ratification as well as possible means of removing such obstacles in law and in practice. Moreover, the value of this General Survey to ILO constituents and to the general reader may be amplified in view of the increased importance of the fundamental Conventions in the context of globalization, and more recently the global economic and financial crisis and jobs crisis, as well as events in North Africa and the Middle East with calls for social justice, dignity, rights and fairness at work.

4. Finally, both the 1998 Declaration and the Social Justice Declaration, which constitute the ILO's response to the challenges of globalization, underline the essential importance of upholding the principles enshrined in these Conventions. In this regard, the Committee joins the Conference Committee on the Application of Standards in emphasizing that ensuring respect for fundamental principles and rights at work results in undeniable benefits to the development of human potential and economic growth in general and therefore contributes to global economic recovery,<sup>3</sup> and emphasizes their contribution to social justice and sustainable peace.

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<sup>2</sup> See the ILO Declaration on Fundamental Principles and Rights at Work of 1998.

<sup>3</sup> ILO: *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, General Report, ILC, 98th Session, Geneva, 2009, para. 97.

## Chapter 2

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### The protection of fundamental principles and rights at work in national constitutions <sup>4</sup>

5. Effective legal systems play a very important role in the protection of fundamental principles and rights at work. In particular, constitutional guarantees are of great importance in the protection of fundamental principles and rights at work, in that they not only provide the framework for these principles and rights to be further developed in national legislation, but also provide a very solid basis for their implementation, particularly through institutional mechanisms, and primarily the decisions of constitutional and supreme courts.

6. It is important to highlight that a number of constitutions attribute the force of law to international treaties,<sup>5</sup> or an authority higher than national legislation,<sup>6</sup> upon their publication or ratification. Accordingly, in the latter case national laws that are in conflict with fundamental principles and rights at work can be set aside on the grounds of their inconsistency with an international treaty in the context of a case before the national jurisdiction. Other systems require the transformation of international treaties into national law through the adoption of national legislation to this end. Moreover, in certain countries, the constitution enumerates international treaties and conventions on human rights which have the same, or even higher legal rank than the constitution itself.<sup>7</sup> It should also be noted that some constitutions provide that, when interpreting and applying the rights which they recognize, the courts shall consider the international treaties to which the State is a party.<sup>8</sup>

7. Examination of the constitutions of member States shows that constitutional provisions relating to fundamental principles and rights at work are very varied. Some apply to “everyone”, while others only cover citizens. Some affirm individual rights or a duty of the State to take action, while others only define the guiding principles of state action, and are therefore less likely to result in meaningful and enforceable protection.

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<sup>4</sup> In view of the broad scope of the General Survey, only the most salient features are presented.

<sup>5</sup> For example, the constitutions of: Angola (2010, art. 13); Kenya (2010, art. 2); Republic of Korea (1948, art. 6); Kyrgyzstan (2010, art. 6); Mongolia (1992, art. 10); Peru (1993, art. 55); and Ukraine (1996, art. 9).

<sup>6</sup> For example, the constitutions of: Albania (1998, art. 122); El Salvador (1983, art. 144); France (1958, art. 55); Guinea (2010, art. 151); Haiti (1987, art. 276); Madagascar (2010, art. 137); Mauritania (1991, art. 79); Morocco (2011, Preamble); and Turkmenistan (2008, art. 6).

<sup>7</sup> For example, the constitutions of: Argentina (1994, art. 75); Benin (1990, art. 7); Plurinational State of Bolivia (2008, art. 256); Brazil (1988, art. 5); Dominican Republic (2010, art. 74); Ecuador (2008, art. 424); Sudan (2005, art. 27); Togo (1992, art. 50); and Bolivarian Republic of Venezuela (1999, art. 23).

<sup>8</sup> For example, the constitutions of: Colombia (1991, art. 93); Guyana (1980, art. 39); Mozambique (2004, art. 43); and Seychelles (1993, art. 48).

Notwithstanding these important differences, the main trends are presented below for each category of fundamental principles and rights at work.

## Freedom of association and collective bargaining

8. Freedom of association is guaranteed in almost all national constitutions. In most cases, the constitution provides that this freedom shall be exercised in accordance with the law. Most constitutions also provide for a number of exceptions, in particular in relation to security forces, or leave the determination of exceptions to the law.<sup>9</sup> Specific references to the right to freely form, to join or not to join trade unions are also found in 142 constitutions. Furthermore, the right to strike is constitutionally protected in 93 countries.<sup>10</sup>

9. Specific provisions in relation to collective bargaining are present in 66 constitutions.<sup>11</sup> For example, the Constitution of Chile (1980, art. 19) recognizes the right to collective bargaining to regulate labour relations, and the Constitution of Morocco (2011, art. 8) provides that the public authorities shall take the necessary measures to promote collective bargaining.

## Forced labour

10. While almost all constitutions contain prohibitions of slavery, not all of them contain a prohibition of forced labour. In this regard, over a hundred constitutions prohibit forced or compulsory labour, without giving a definition of this concept.<sup>12</sup> In the same way that Convention No. 29 provides for a number of exceptions, most constitutions either provide some exceptions, or leave the determination of exceptions to the law.<sup>13</sup> Where forced labour is not expressly prohibited in the constitution, protection against forced labour or certain forms of forced labour may be guaranteed to a certain extent through other types of prohibitions or rights, such as:

- the prohibition of all forms of slavery or servitude,<sup>14</sup> exploitation,<sup>15</sup> or trafficking;<sup>16</sup>

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<sup>9</sup> The question of the conformity of these exceptions with the provisions of Convention No. 87, is not addressed here.

<sup>10</sup> See paragraph 123 below.

<sup>11</sup> For example, the constitutions of: Plurinational State of Bolivia (2009, art. 49); Dominican Republic (2010, art. 62); Ecuador (2008, art. 326); Ethiopia (1994, art. 42); Greece (1975, art. 22); Guyana (1980, art. 147); Japan (1946, art. 28); Kenya (2010, art. 41); Republic of Korea (1948, art. 33); Republic of Moldova (1994, art. 43); Nepal (2007, art. 30); Philippines (1987, art. XIII); Poland (1997, art. 59); Rwanda (2003, art. 38); Seychelles (1993, art. 35); South Africa (1996, art. 23); Turkey (1982, art. 53). In Canada, the Supreme Court established that freedom of association includes a measure of protection for collective bargaining, despite the absence of a specific provision in the Canadian Charter of Rights and Freedoms (*Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, 2007, CSC 27).

<sup>12</sup> For example, the constitutions of: Afghanistan (2004, art. 49); Dominica (1978, art. 4); Iraq (2005, art. 37); Liberia (1984, art. 12); Malaysia (1957, art. 6); Mexico (1917, art. 5); Russian Federation (1993, art. 37); Saint Lucia (1978, art. 4); Slovenia (1991, art. 49); Suriname (1987, art. 15); United Republic of Tanzania (1977, art. 25); Thailand (2007, art. 38). In one constitution only a specific situation is defined as forced labour: the Constitution of Serbia (2006, art. 26) prohibits forced labour and, before providing for some exceptions, specifies that sexual or financial exploitation of a person in an unfavourable position shall be deemed forced labour.

<sup>13</sup> The question of the conformity of these exceptions with the provisions of Convention No. 29 is not addressed here.

<sup>14</sup> For example, the constitutions of: Chad (1996, art. 20); Chile (1980, art. 19); Japan (1946, art. 18); Niger (2010, art. 4); and United States (1787, Thirteenth Amendment).

- the right to dignified and equitable working conditions;<sup>17</sup>
- the right to the free choice of employment.<sup>18</sup>

## Child labour

11. Few constitutions establish a specific minimum age for admission to employment or work. This specific protection is mostly found in the constitutions of Latin American countries.<sup>19</sup> The Constitutions of The former Yugoslav Republic of Macedonia (1991, art. 42), Serbia (2006, art. 66), Seychelles (1993, art. 31) and Zambia (1991, art. 24) prohibit child labour under the age of 15. The Constitution of the Congo (2002, art. 34) sets the minimum age at 16 years. A number of other constitutions contain provisions in relation to child labour. Some make reference to a minimum age for work, without determining that age,<sup>20</sup> while others prohibit paid employment by children,<sup>21</sup> or provide that work performed by children must not be unsuitable for the child's age.<sup>22</sup>

12. Many national constitutions contain general provisions on the protection of children. A number of constitutions specifically address some of the worst forms of child labour. For example:

- the Constitution of Afghanistan (2004, art. 49) prohibits forced labour by children;
- the Constitution of Belarus (1994, art. 32) provides that children shall not be used for work that may be harmful to their physical, mental or moral development;
- the Constitution of Guinea (2010, art. 19) provides for the protection of young persons against trafficking;
- the Constitution of South Africa (1996, art. 28) prohibits the use of children under 18 in armed conflict.

13. In view of the importance of education in eliminating child labour, it should be noted that a large number of constitutions contain provisions relating to education, and that many recognize a right to education, as well as an obligation for the State to provide free education up to the end of compulsory schooling.

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<sup>15</sup> For example, the constitutions of: Algeria (1989, art. 8); Cuba (1976, art. 14); Sri Lanka (1978, art. 27); and Syrian Arab Republic (1973, art. 13).

<sup>16</sup> For example, the constitutions of: Cambodia (1993, art. 46); Colombia (1991, art. 17); and Ecuador (2008, art. 66).

<sup>17</sup> For example, the constitutions of: Argentina (1994, art. 14bis); and Colombia (1991, art. 25).

<sup>18</sup> For example, the constitutions of: Chile (1980, art. 19); Costa Rica (1949, art. 56); Honduras (1982, art. 127); Hungary (1949, art. 70); Indonesia (1945, art. 28E); Rwanda (2003, art. 37); Switzerland (1999, art. 27); and Turkmenistan (2008, art. 33).

<sup>19</sup> The constitutions of: Brazil (1988, art. 7); Ecuador (2008, art. 46); El Salvador (1983, art. 38); Guatemala (1985, art. 102); Honduras (1982, art. 128); Mexico (1917, art. 123); and Panama (1972, art. 70).

<sup>20</sup> For example, the constitutions of: Albania (1998, art. 54); Angola (2010, art. 80); Croatia (1990, art. 65); Mozambique (2004, art. 121); Portugal (1976, art. 69); and Somalia (2004, art. 18).

<sup>21</sup> For example, the constitutions of: Italy (1947, art. 37); Lesotho (1993, art. 32); Malta (1964, art. 15); and Romania (1991, art. 49).

<sup>22</sup> For example, the constitutions of: South Africa (1996, art. 28); and Turkey (1982, art. 50).

## Equality, non-discrimination and equal remuneration

14. Most constitutions contain general provisions guaranteeing equality before the law, the equal enjoyment of rights and fundamental freedoms, as well as non-discrimination. Certain constitutions specify that both direct and indirect discrimination shall be prohibited.<sup>23</sup> Other provisions include:

- equal opportunities provisions: the obligation of the State to ensure and promote equal opportunities for all is established in the constitutions of a number of countries, such as the Plurinational State of Bolivia (2009, art. 8); in a number of constitutions of countries in North Africa and the Middle East, equal opportunities are only guaranteed for citizens;<sup>24</sup>
- special measures, including affirmative action: some constitutions allow the State to make special provision in favour of certain groups,<sup>25</sup> often those that are particularly in need of protection or have historically suffered discrimination.

15. Work-related discrimination is addressed in approximately a quarter of national constitutions, mostly in countries in Latin America and Africa. For example, the Constitution of Senegal (2001, art. 25) provides that no one may be impeded in his or her work by reason of his or her origin, sex, opinions, political choices, or beliefs. Another example is the Constitution of Brazil (1988, art. 7) which prohibits any difference in wages, in the performance of duties and in hiring criteria by reason of sex, age, colour or marital status. The Constitution of the Philippines (1987, art. XIII) provides that the State shall promote full employment and equality of employment opportunities for all. In addition, a number of constitutions contain specific provisions in relation to public sector employment, which is sometimes expressly reserved for nationals.<sup>26</sup>

16. With regard to the grounds on which equality shall be ensured or discrimination prohibited, many different combinations are found. Some constitutions refer to “any grounds” or provide an open list of grounds. Others specifically mention certain grounds, covering all or some of those enumerated in Convention No. 111. Additional grounds which are frequently listed include language, economic condition, level of education, disability or age. The following additional grounds are also included in some constitutions:

- health, and in particular persons affected by HIV;<sup>27</sup>
- pregnancy;<sup>28</sup>
- membership of a trade union or public association;<sup>29</sup>

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<sup>23</sup> The constitutions of: Cyprus (1960, art. 28); Kenya (2010, art. 27); Marshall Islands (1979, art. II); Montenegro (2007, art. 8); Serbia (2006, art. 21); and South Africa (1996, art. 9).

<sup>24</sup> The constitutions of: Iraq (2005, art. 16); Jordan (1952, art. 6); Qatar (2003, art. 19); Syrian Arab Republic (1973, art. 25); and Yemen (1991, art. 24).

<sup>25</sup> For example, the constitutions of: Nepal (Interim Constitution 2007, art. 13(3)); Ecuador (2008, art. 11(2)); Kyrgyzstan (2010, art. 16); Malta (1964, art. 45); Namibia (1990, art. 23(2)); Papua New Guinea (1975, art. 55); and Seychelles (1993, art. 27).

<sup>26</sup> For example, the Constitution of Panama (1972, art. 300) provides that public employees shall be Panamanian.

<sup>27</sup> The constitutions of: Burundi (2005, art. 22); and Ecuador (2008, art. 11).

<sup>28</sup> The constitutions of: Guyana (1980, art. 149); Kenya (2010, art. 27); New Zealand (Bill of Rights Act, 1990, art. 19); and South Africa (1996, art. 9).

<sup>29</sup> The constitutions of: Azerbaijan (1995, art. 25); Madagascar (2010, art. 28); Paraguay (1982, art. 88); and Russian Federation (1993, art. 19).



- sexual orientation.<sup>30</sup>

17. Constitutional provisions on equal remuneration vary as follows:

- provisions guaranteeing fair remuneration, or remuneration without discrimination or without discrimination based on sex;<sup>31</sup>
- provisions ensuring “equal pay for equal work” or “equal pay for equal work for men and women”;<sup>32</sup>
- provisions ensuring equal “pay” or “remuneration” for “work of equal value” generally, or with respect to a range of grounds.<sup>33</sup> Some specifically guarantee equal remuneration for men and women for work of equal value, as provided for in Convention No. 100.<sup>34</sup>

18. Overall, the Committee wishes to recall that the meaningful protection of fundamental principles and rights at work is best ensured when protection procedures and mechanisms are established. For instance, a number of national constitutions expressly provide that rights and fundamental freedoms are enforceable by the national courts. Moreover, most constitutions attribute to a constitutional or a supreme court the power to verify the conformity of national legislation with the constitution. As a consequence, laws can be set aside if they are found not to be in conformity with the constitution, and redress can be sought in relation to acts by an authority applying unconstitutional provisions of such laws. Another important procedure which allows greater protection of fundamental principles and rights at work is the possibility for an individual who alleges any violation of these rights to apply directly to the constitutional or supreme court for protection and eventually redress. Lastly, certain constitutions establish other protection mechanisms,<sup>35</sup> such as ombudspersons or national human rights institutions.

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<sup>30</sup> The constitutions of: the Plurinational State of Bolivia (2009, art. 14); Ecuador (2008, art. 11); Mexico (1917, art. 1); New Zealand (Bill of Rights Act, 1990, art. 19); Portugal (1976, art. 13); South Africa (1996, art. 9); and Sweden (1974, Chapter 1, art. 2).

<sup>31</sup> Of the 22 countries concerned, see, for example, the constitutions of: Angola (2010, art. 76); Burkina Faso (1991, art. 19); Finland (1999, art. 6); Haiti (1987, art. 35); Indonesia (1945, art. 28D); Kazakhstan (1995, art. 24); and Turkey (1982, art. 55).

<sup>32</sup> Of the 39 countries concerned, see, for example, the constitutions of: Argentina (1994, art. 14bis); Burundi (2005, art. 57); Cambodia (1993, art. 36); China (1982, art. 48); India (1949, art. 39); and Romania (1991, art. 41).

<sup>33</sup> The constitutions of: Greece (1975, art. 22); and Maldives (2008, art. 37).

<sup>34</sup> See, for example, the constitutions of: Belarus (1994, art. 42); Plurinational State of Bolivia (2009, art. 48); Dominican Republic (2010, art. 62); Malawi (1994, art. 31); and Switzerland (1999, art. 8).

<sup>35</sup> For example, the constitutions of: Congo (2002, art. 168); Dominican Republic (2010, art. 190); France (1958, art. 71-1); and Philippines (1987, art. XIII).

## Chapter 3

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### Other relevant international instruments

19. The ILO's special competence in relation to fundamental principles and rights at work is supplemented by that of other international organizations of which the mandate includes related areas, and certain regional organizations which are also competent for these matters. The many international and regional instruments adopted in the framework of these other organizations, which contain provisions relating to labour, cannot be given exhaustive coverage in the present Survey. The Committee nevertheless considers that it is useful to recall the following:

- the eight fundamental ILO Conventions form an integral part of the United Nations' overall human rights framework;
- the fundamental principles and rights at work are very broadly recognized, beyond the ILO's eight fundamental Conventions, in the other international and regional texts that the Committee has examined; and
- the Committee participates, through its collaboration with the supervisory bodies entrusted with monitoring the effective application of the principles and rights set out in these texts, in an essential effort intended to guarantee coherence in supervising the implementation of the international and regional obligations of States relating to fundamental principles and rights at work.

### Recognition of fundamental principles and rights at work in other universal and regional instruments

#### United Nations instruments

20. Many instruments adopted by the United Nations, from the *Universal Declaration of Human Rights* ("UDHR", 1948) to the recent *Convention on the Rights of Persons with Disabilities* (2006) contain provisions on fundamental principles and rights at work.

#### *Freedom of association and the right to collective bargaining*

21. The UDHR (Articles 20(1) and 23(4)) and the 1966 *International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights* (Articles 22 and 8, respectively) set forth the right of everyone to freedom of association, including the right to form and join trade unions for the protection of their interests. It is also interesting to note that Article 8(1)(d) of the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR") provides that States parties undertake to ensure the right to strike, exercised in conformity with the laws of the particular country.

22. Rights and liberties indispensable for the free exercise of trade union rights are also recognized in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (1990)<sup>36</sup> (Article 26(1)(b)) and the *Convention on the Rights of Persons with Disabilities* (Article 27(1)(c)).

23. It should be noted that none of these instruments explicitly provide for the right to collective bargaining.<sup>37</sup>

#### *Elimination of all forms of forced or compulsory labour*

24. The *UDHR* (Article 4) and the *International Covenant on Civil and Political Rights* (“*ICCPR*”) (Article 8(1) and (2)) prohibit slavery and servitude.<sup>38</sup> The *UDHR* also provides that everyone has the right to free choice of employment (Article 23(1)). The *ICCPR* specifically provides that no one shall be required to perform forced or compulsory labour (Article 8(3)(a)), subject to a series of exceptions (Article 8(3)(b) and (c)) similar to those envisaged in Convention No. 29. The *ICESCR* recognizes the right to work which is freely chosen or accepted (Article 6(1)).

25. A specific prohibition of forced or compulsory labour is also contained in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Article 11(2)) and the *Convention on the Rights of Persons with Disabilities* (Article 27(2)).

#### *Effective abolition of child labour*

26. The *ICESCR* provides that children should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, or dangerous to life or likely to hamper their normal development should be punishable by law and States should set age limits below which the paid employment of child labour should be prohibited and punishable (Article 10(3)).

27. The *Convention on the Rights of the Child* (1989) contains several provisions on child labour. States parties are under the obligation to provide for a minimum age or minimum ages for admission to employment (Article 32(2)(a)), prevent the use of children in the illicit production and trafficking of drugs (Article 33), prevent the exploitative use of children in prostitution or in pornographic performances and materials (Article 34), prevent the abduction of, the sale of or traffic in children

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<sup>36</sup> This Convention, which extends to all migrant workers, whether they are in a regular or irregular situation (and the members of their families), rights generally reserved for individuals who have emigrated for employment under regular conditions, entered into force in 2003. See also *Migrant workers*, General Survey on the reports on the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(Part 1B), ILC, 87th Session, Geneva, 1999, particularly paras 49–61.

<sup>37</sup> However, in the framework of the supervision of the application of the *ICESCR*, ratifying States are to provide information on the collective bargaining mechanisms in place and their impact on workers’ rights.

<sup>38</sup> Other United Nations instruments address issues of slavery and the trafficking of persons for exploitation, including the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1949) and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (the “*Palermo Protocol*”, 2000). For details of these other instruments, see *Eradication of forced labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 96th Session, Geneva, 2007, paras 19 and 20.

(Article 35)<sup>39</sup> and protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36). The *Convention* also addresses the protection of children in armed conflicts (Article 38).<sup>40</sup> It was reinforced in 2000 by the adoption of two *Optional Protocols*, one on the sale of children, child prostitution and child pornography, and the other on the involvement of children in armed conflict.

### *Equality, non-discrimination and equal remuneration*

28. The right to equality and non-discrimination is at the heart of human rights discourse, and has been incorporated in various United Nations human rights instruments. General provisions envisaging equality and prohibiting discrimination on the basis of particular grounds are contained in the *UDHR* and the *1966 Covenants*. The grounds enumerated in these instruments are race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.<sup>41</sup> This is not considered a closed list, and a number of other grounds have been considered, including sexual orientation.<sup>42</sup> In the context of the right to work under the *ICESCR* (Article 6(1)), the requirements of Convention No. 111 are inferred.<sup>43</sup>

29. With particular reference to discrimination in employment and occupation, specific provisions are contained in the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) (*CEDAW*) (Article 11(1)), the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (Article 25(1)), and the *Convention on the Rights of Persons with Disabilities* (Article 27(1)). The definition of discrimination in the *International Convention on the Elimination of All Forms of Racial Discrimination* (*ICERD*) and the *CEDAW* are modelled on the definition in Convention No. 111.<sup>44</sup>

30. The issue of equal pay or remuneration is reflected in the main human rights international instruments, though the ILO was the first at the international level to recognize the concept of "work of equal value". Some of these instruments, including the *ICESCR*<sup>45</sup> and the *CEDAW*<sup>46</sup> refer explicitly to the principle of "equal remuneration

<sup>39</sup> Reference should also be made to the adoption in 2000 of the *Palermo Protocol* (see previous footnote), the purposes of which include preventing and combating trafficking in persons, paying particular attention to women and children (Article 2(a)). Article 3 of the *Protocol* defines the term "trafficking in persons" and specifies that exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs, and that the term "child" shall mean any person under 18 years of age.

<sup>40</sup> It should also be noted that the *Additional Protocols to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) and of Non-International Armed Conflicts (Protocol II)*, adopted in 1977, already regulated the participation of children in hostilities (see, in particular, Articles 77(2) and 4(3)(c), respectively).

<sup>41</sup> *UDHR*, Article 2; *ICCPR*, Article 2(1); and *ICESCR*, Article 2(2). See also *Equality in employment and occupation*, Special Survey on equality in employment and occupation in respect of Convention No. 111, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 83rd Session, Geneva, 1996, para. 244, and *Equality in employment and occupation*, General Survey on the reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation No. 111, 1958, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 75th Session, Geneva, 1988, para. 2.

<sup>42</sup> See, for example, the Committee on Economic, Social and Cultural Rights (CESCR), general comment No. 20, 2 July 2009, E/C.12/GC/20, para. 32.

<sup>43</sup> CESCR, general comment No. 18, 24 November 2005, E/C.12/GC/18, para. 12. The complementarity of the different human rights instruments and Convention No. 111 is also acknowledged in general comment No. 20, op. cit., para. 5.

<sup>44</sup> *ICERD*, Article 1(1); *CEDAW*, Article 1.

<sup>45</sup> Article 7(a)(i).

for work of equal value”. Others, such as *UDHR*<sup>47</sup> and *ICERD*<sup>48</sup> refer to the more limited concept of “equal pay for equal work.”

## Regional instruments

31. The constituent acts of two regional organizations deserve first mention as they contain provisions relating to the fundamental principles and rights at work, to which all the member States of these organizations are therefore committed. These are, firstly, the *Charter of the Organization of American States* (1948, as amended by a series of Protocols), which provides, among other measures, that employers and workers have the right to associate themselves freely for the defence and promotion of their interests, including the right to collective bargaining (Article 45(c)). The second is the *Treaty on European Union*, as amended following the entry into force of the *Treaty of Lisbon* in 2009, which provides that the Charter of Fundamental Rights of the European Union shall have the same legal value as the Treaties (Article 6(1)),<sup>49</sup> that is, it has binding force for the institutions of the Union and for Member States, when implementing the Union’s law. The *Charter of Fundamental Rights* (2000, as adapted in 2007) covers all of the fundamental principles and rights at work in Articles 12 (freedom of association), 28 (right of collective bargaining and action), 5 (prohibition of slavery and forced labour), 32 (prohibition of child labour and protection against economic exploitation and any harmful work), 21 (non-discrimination) and 23 (equality between women and men in all areas, including employment, work and pay).

32. In addition to these constituent acts, many instruments adopted within the framework of regional organizations contain provisions relating to fundamental principles and rights at work: certain particularly relevant examples in the context of the present General Survey are referred to below in relation to each of the four categories of fundamental principles and rights at work.

### *Freedom of association and the right to collective bargaining*

33. Freedom of association is recognized in all the regional instruments examined, including in the *Convention for the Protection of Human Rights and Fundamental Freedoms* (“*European Convention on Human Rights*”, ECHR, 1950; Article 11), the *American Convention on Human Rights* (1969; Article 16), the *African Charter on Human and Peoples’ Rights* (1981; Article 10), the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (1995; Article 12(1)) and the *Arab Charter on Human Rights* (2004; Article 24(5)).

34. However, the right to collective bargaining, with the exception of the constituent acts referred to in paragraph 31 above, is only recognized in Article 6 of both the *European Social Charter* (1961) and the *European Social Charter (Revised, 1996)*.

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<sup>46</sup> Article 11(1)(d).

<sup>47</sup> Article 23(2).

<sup>48</sup> Article 5(d)(i).

<sup>49</sup> The Court of Justice of the European Union may hear cases of violations of the *Charter*. Moreover, if an individual considers that a national authority has violated the Charter when implementing EU law, he or she can apply to the national courts in the country in question. A Protocol to the *Lisbon Treaty*, however, provides that Title IV of the *Charter* does not create justiciable rights applicable to Poland or the United Kingdom. Subsequently, the Czech Republic took a similar decision.

Reference should also be made to Article 7 of the *Inter-American Charter of Social Guarantees* (1948), which provides for the existence of collective labour agreements.<sup>50</sup>

35. It is also interesting to note that the right to strike is recognized in the *Charter of the Organization of American States* (Article 45(c)) and the *Charter of Fundamental Rights of the European Union* (Article 28), as well as in Article 27 of the *Inter-American Charter of Social Guarantees*, Article 6(4) of both the *European Social Charter* and the *European Social Charter (Revised)*, Article 8(1)(b) of the *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights* ("Protocol of San Salvador", 1988) and Article 35(3) of the *Arab Charter on Human Rights*.

#### *Elimination of all forms of forced or compulsory labour*

36. The elimination of all forms of forced or compulsory labour is envisaged in all the principal regional instruments examined, including the *ECHR* (Article 4), the *American Convention on Human Rights* (Article 6), the *African Charter on Human and Peoples' Rights* (Article 5), the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (Article 4) and the *Arab Charter on Human Rights* (Article 10).<sup>51</sup>

#### *Effective abolition of child labour*

37. The issue of the effective abolition of child labour is also broadly addressed in the instruments adopted at the regional level. Accordingly, the establishment of a minimum age for admission to employment is envisaged in the *Inter-American Charter of Social Guarantees* (Article 16), the *European Social Charter* and the *European Social Charter (Revised)* (Article 7), the *African Charter on the Rights and Welfare of the Child* (1990; Article 15(2)(a)), the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (Article 27(3)) and the *Arab Charter on Human Rights* (Article 34(3)).

38. Specific provisions on the worst forms of child labour are contained in the *African Charter on the Rights and Welfare of the Child* (Articles 15, 22 and 27 to 29), the *Protocol of San Salvador* (Article 7(f)) and the *Arab Charter on Human Rights* (Article 34(3)).

39. Several recent initiatives in Asia should also be emphasized:

- two Conventions on the rights of the child were adopted in 2002 by the South Asian Association for Regional Cooperation (SAARC), one to prevent and combat trafficking in women and children for prostitution, and the other addressing regional arrangements for the promotion of child welfare in South Asia; and
- in the framework of the Association of Southeast Asian Nations (ASEAN), a *Declaration Against Trafficking in Persons Particularly Women and Children* was adopted in 2004.

<sup>50</sup> Furthermore, the Committee notes that the Court of Justice of the European Union in the case *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line ABP* reaffirmed that collective action is a fundamental right and integral part of the general principles of European Community law, while the European Court of Human Rights declared in *Demir and Baykara v. Turkey* that the right to bargain collectively with the employer has become one of the essential elements of the "right to form and to join trade unions for the protection of workers' interests" provided for in the European Convention on Human Rights.

<sup>51</sup> See also General Survey, 2007, para. 21.

*Equality, non-discrimination and equal remuneration*

40. Regional instruments tend to enshrine general principles of equality and non-discrimination, including, for example, in the *African Charter on Human and Peoples' Rights* (Articles 2, 3 and 19), the *Protocol of San Salvador* (Article 3) and the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (Article 20).
41. Only certain regional instruments contain specific provisions on the elimination of discrimination in employment and occupation:
- Article 20 of the *European Social Charter (Revised)* refers to the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination, although it is limited to the ground of sex; and
  - Article 34(1) of the *Arab Charter on Human Rights*, while reserving the right to work for citizens, provides that the State shall ensure equality of opportunity without discrimination of any kind on the grounds of race, colour, sex, religion, language, political opinion, membership of a union, national origin, social origin or any other situation.
42. Various regional instruments also contain provisions in relation to equal remuneration,<sup>52</sup> with some providing for the broader concept of equal value, including the following:
- the *European Social Charter* and the *European Social Charter (Revised)* recognize the right of men and women workers to equal pay for work of equal value (Article 4(3));
  - the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)* calls on States parties to promote the right to equal remuneration for jobs of equal value for women and men (Article 13(b)).
43. Others, however, establish a more limited right to equal remuneration for equal work, including the following:
- the *Protocol of San Salvador* provides for equal wages for equal work for all workers (Article 7(a)); and
  - the *Arab Charter on Human Rights* provides that there shall be no discrimination between men and women in the enjoyment of the right to effectively benefit from equal remuneration for equal work (Article 34(4)).

**The objective of coherence in the supervision  
of the international and regional obligations of  
States in relation to fundamental principles  
and rights at work**

44. Most of the international and regional texts referred to above have supervisory mechanisms entrusted with monitoring the effective application of the obligations assumed by States through their ratification.

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<sup>52</sup> See *Equal remuneration*, General Survey of the reports on the Equal Remuneration Convention, 1951 (No. 100) and Equal Remuneration Recommendation, 1951 (No. 90), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 72nd Session, Geneva, 1986, para. 6.

45. In the context of the United Nations, this supervision is entrusted to bodies composed of independent experts (the “treaty bodies”).<sup>53</sup> As the Committee has recalled on many occasions,<sup>54</sup> international labour standards and the provisions of related United Nations human rights treaties are complementary and mutually reinforcing. Continuing close cooperation between the ILO and the United Nations to supervise the application of the respective instruments is therefore essential, particularly in the context of United Nations reforms aimed at greater coherence and cooperation within the United Nations system, including with respect to human rights mainstreaming. This cooperation includes the regular exchange of information between the ILO and the United Nations human rights bodies and organs. The ILO provides reports regularly to the CESCR, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination against Women, the Committee on Migrant Workers and the Human Rights Committee, and attends private sessions of these bodies. In this respect, the Committee also takes into account in its own work, where appropriate, the concluding observations of the treaty bodies and charter-based bodies.

46. The collaboration that also exists between the ILO and other United Nations bodies and institutions, such as the Human Rights Council and its Universal Periodic Review and the work of its Special Rapporteurs, also assists in reinforcing coherence within the United Nations system.<sup>55</sup> Some issues, such as children in armed conflicts, are also dealt with at the apex of the United Nations system – in the Security Council. Accountability also arises in regard to serious crimes under the jurisdiction of the International Criminal Court.

47. At the regional level, the institutionalized collaboration which exists between the ILO and the committee of experts entrusted with supervising the application of the European Social Charter, its Additional Protocol of 1988 and the European Social Charter (Revised) should be mentioned as a particularly effective example with a view to developing greater coherence in the supervision of the international and regional obligations of States in relation to fundamental principles and rights at work. In accordance with the procedure established under Article 26 of the European Social Charter, a representative of the ILO participates in an advisory capacity in the sessions of the European Committee of Social Rights.

48. The Committee also wishes to emphasize that three regional systems for the protection of human rights have developed a system of jurisdictional supervision, namely the African Court on Human and Peoples’ Rights,<sup>56</sup> the Inter-American Court of Human Rights and the European Court of Human Rights.

<sup>53</sup> The treaty bodies (including the CESCR, the CERD, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, examine the reports submitted regularly by States parties on the application of the treaties and draw up conclusions and recommendations (“concluding observations”). Most of the bodies can also receive individual communications in the event of the violation of rights set out in the Conventions for which they are responsible.

<sup>54</sup> See, in particular, the relevant sections of the Committee’s annual General Report (for example, in its 2011 report, paras 109–111).

<sup>55</sup> See the *Information document on ratifications and standards-related activities* submitted to the Conference each year (for example, Report III (Part 2), ILC, 100th Session, Geneva, 2011, paras 114–117).

<sup>56</sup> A Protocol, adopted by the African Union in 2008, which has not yet entered into force, provides for the merger of the African Court on Human and Peoples’ Rights and the Court of Justice of the African Union into a single court, namely the African Court of Justice and Human Rights.



## **Part II. Freedom of association and collective bargaining**

### **Chapter 1**

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

##### **Introduction**

49. Freedom of association is essential for the pursuit of social justice in the process of globalization and interlinks closely with all other fundamental rights covered by this General Survey. It is a basic human right with universal scope enabling the enjoyment of other rights, a process with substantive content, and opens the door to participatory actions against forced labour, the protection of children from abuses and responsive measures based on non-discrimination and equality beneficial to all. Freedom of association is at the heart of democracy from the grassroots to the higher echelons of power.

50. In its Preamble, the ILO Constitution of 1919 sets forth the principle of freedom of association as one of the means of improving the conditions of workers and ensuring peace. In 1944, the Declaration of Philadelphia, which forms part of the ILO Constitution, reaffirmed that “freedom of expression and of association are essential to sustained progress” and emphasized that this was one of the “fundamental principles on which the Organisation is based”. In June 1998, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference, stated that “all Members, even if they have not ratified the [fundamental] Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights”. These principles include freedom of association and the effective recognition of the right to collective bargaining. The 1998 Declaration therefore considers to be fundamental the principles enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The ILO Declaration on Social Justice for a Fair Globalization, 2008, adds that freedom of association and the effective recognition of the right to collective bargaining are of particular significance for the achievement of the ILO’s four strategic objectives.<sup>57</sup>

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<sup>57</sup> Namely: (i) create greater opportunities for women and men to secure decent employment and income; (ii) enhance the coverage and effectiveness of social protection for all; (iii) strengthen tripartism and social dialogue; and (iv) promote and realize standards and fundamental principles and rights at work.

51. Freedom of association and collective bargaining, which are now set out in most of the constitutions of member States,<sup>58</sup> are of vital importance for the social partners, as they enable them to establish rules in the field of working conditions, including wages, to pursue more general claims and to reconcile their respective interests with a view to ensuring lasting economic and social development. In the Committee's opinion, strong and independent workers' organizations are essential to compensate the legal and economic inferiority of workers. Furthermore, employers' organizations are particularly important for the protection of interests of small enterprises. Workers' and employers' organizations are major tools for labour market governance and for the development of industrial relations systems that are vectors of stability, progress and economic and social prosperity. They also make it possible to ensure the effective application of labour legislation through the denunciation of violations of the law wherever necessary. In addition, these organizations participate in consultation machinery for the definition of economic and social policy and the formulation of draft labour legislation. It is therefore essential to ensure their independence in relation to the public authorities and political parties, as recalled by the resolution adopted by the Conference in 1952 concerning the independence of the trade union movement.

52. Conventions Nos 87 and 98 are among those which have received the most ratifications. As additional proof of their importance, all member States, even if they have not ratified the Conventions in question have, on the one hand, an obligation arising from the very fact of membership in the ILO to respect, to promote and to realize the principles concerning fundamental rights which are the subject of these Conventions and, on the other hand, can be called upon to provide explanations to the Committee on Freedom of Association which, as a tripartite body of the Governing Body, has had the mandate since 1951 to examine complaints alleging violations of the principles of freedom of association presented by workers' or employers' organizations against a member State. The Committee of Experts attaches particular importance to the decisions of the Committee on Freedom of Association. As a tripartite body, the legitimacy of the recommendations and principles of the Committee on Freedom of Association is accentuated by the consensus that prevails in its work and the expertise in industrial relations provided by the Government, Employer and Worker members who sit on the Committee in their individual capacity. The very broad convergence of views between the Committee on Freedom of Association and the Committee of Experts can be explained mainly by a need for coherence between the supervisory bodies in relation to the fundamental principles set forth in Conventions Nos 87 and 98. The Committee of Experts therefore frequently refers in its observations to the reports of the Committee on Freedom of Association concerning specific problems relating to freedom of association in a particular country, and the Committee on Freedom of Association draws the attention of the Committee of Experts to the legislative aspects of cases that it is examining, or bases itself on the principles established by the Committee of Experts. Also, at the request of the Committee on Freedom of Association, the Committee of Experts follows up on the implementation of the recommendations of the Committee on Freedom of Association.<sup>59</sup>

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<sup>58</sup> See Part I, Chapter 2, above.

<sup>59</sup> *Argentina, Australia, Colombia, Fiji, Panama, Uruguay, etc.*

## Scope of the Convention and methods of application

### General principle and authorized exceptions

53. *By virtue of Article 2 of Convention No. 87, all workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.* These guarantees apply to all employers and workers in the private and public sectors, including seafarers, agricultural workers, migrant workers, domestic workers, apprentices, subcontracted workers, dependent workers,<sup>60</sup> workers employed in export processing zones and in the informal economy, and self-employed workers.<sup>61</sup> This right also has to be guaranteed in both law and practice without distinction or discrimination of any sort, particularly with regard to race, nationality, sex, civil status, age, occupation and political opinions and activities. Furthermore, Convention No. 87 is not confined to recognizing the right of workers to establish and join first-level organizations, but also recognizes the right of such organizations to establish higher level organizations, which must enjoy the rights recognized for first-level organizations. Finally, as emphasized by *Article 6 of the Convention*, the provisions of *Articles 2, 3 and 4 of the Convention* also apply to federations and confederations.

54. The only exceptions authorized to this principle are set out in *Article 9, paragraph 1*, which allows States to determine the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police. These exceptions are interpreted in a restrictive manner by the ILO supervisory bodies (see below). In practice, the Committee observes that several countries authorize the police forces to establish trade union organizations.<sup>62</sup>

### Methods of application

55. *The principal objective of Convention No. 87 is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution.* However, Convention No. 87, in the same way as Convention No. 98, does not contain specific stipulations with regard to its methods of application. Under the terms of *Articles 1 and 11*, each State bound by the Convention “undertakes to give effect to [its] provisions” and “to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise”. Accordingly, the Convention does not necessarily require States to adopt legislation for the implementation of its provisions. For example, for many years, freedom of association was not regulated by legislation in *Uruguay*, where the Convention was applied directly and case law defined the framework for the exercise of the rights of organizations. However, direct legislative intervention is, in almost all countries, the principal method of application of the Convention at the national level (adoption of industrial relations laws, labour codes, etc.).

<sup>60</sup> See the Employment Relationship Recommendation, 2006 (No. 198).

<sup>61</sup> See below paras 63–81.

<sup>62</sup> See, for example, the European Council of Police Unions, which groups together the unions from 20 European countries. See also Brazil and New Zealand (in its report under art. 19 of the Constitution, the Government of New Zealand indicates that the armed forces are not covered by the Employment Relations Act, 2000, but that the police force is covered by the Act, subject to certain arrangements). In contrast, as indicated in the report under art. 19 of the Constitution provided by the Government of Morocco, in that country the personnel of the police forces and auxiliary forces under the responsibility of the Ministry of the Interior cannot establish unions.

Moreover, indirect legislative intervention can be used to establish a legislative framework for collective bargaining, leaving it to the parties to determine together the arrangements governing their relations and agreements. However, all of these legislative interventions have to be interpreted in light of *Article 8* of the Convention, under the terms of which, while organizations are bound, in the exercise of these rights, to respect the law, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. In practice, the effectiveness of the protection and promotion of freedom of association at the national level varies considerably. *Yet, irrespective of the type of intervention chosen for the implementation of the Convention, the Committee emphasizes the importance that needs to be attached to ensuring that the introduction of any draft legislation on freedom of association and the right to organize that is likely to affect collective bargaining or terms and conditions of employment is preceded by free and frank consultations with the most representative employers' and workers' organizations, with a view to ensuring that the rules adopted are endorsed by all parties, and are therefore sustainable.*<sup>63</sup>

56. The guarantees set out in constitutions, laws and regulations can be supplemented by other methods of application. These include declarations, public programmes and policies, as well as their evaluation, and codes of conduct and other machinery for self-regulation. They also include recourse procedures and specific machinery established for the settlement of collective disputes. Effect is also frequently given in practice to the provisions of the Convention through national case law and arbitration awards.<sup>64</sup> Finally, the labour inspection services, as well as the authority responsible for the registration of organizations and the authorities entrusted with the settlement of disputes, contribute to ensuring the application of the Convention on a day-to-day basis.

57. In this context, the Committee has recently noted with satisfaction several interesting cases of progress, including the explicit recognition in the new Constitution in Kenya<sup>65</sup> of the right to form, join or participate in the activities and programmes of trade unions or of employers' organizations; the recognition of the universal nature of the right to organize and collective bargaining for all workers, including agricultural workers, in the new Constitution of the *Plurinational State of Bolivia*;<sup>66</sup> the adoption of legislation broadening the scope of application of the Convention in *Chile*;<sup>67</sup> and the amendment to the Constitution in *El Salvador*,<sup>68</sup> under the terms of which employers and workers in the private sector, without distinction as to nationality, sex, race, creed or political persuasion, and whatever their activity or the nature of the work they perform, have the right to associate freely in order to defend their respective interests, by forming occupational associations or unions (the same right is accorded to workers in

<sup>63</sup> See, for example, the Report of the Committee of Experts on the Application of Conventions and Recommendations (hereinafter referred to as the CEACR), Report III (Part 1A), ILC, 100th Session, Geneva, 2011, *Bolivarian Republic of Venezuela* – observation.

<sup>64</sup> See, for example, *Mexico* – CEACR, observation, 2011: the Committee requested the amendment of section 75 of the Federal Act on State Employees (the prohibition of re-election in trade unions) to align it with the case law of the Supreme Court of Justice, with a view to bringing the Act into conformity with the Convention and current ILO practice. According to the Government, even though the legislation in question has not been amended, the Federal Conciliation and Arbitration Tribunal applies the case law referred to.

<sup>65</sup> Kenya – CEACR, observation, 2011, Convention No. 98.

<sup>66</sup> *Plurinational State of Bolivia* – CEACR, observation, 2010.

<sup>67</sup> *Chile* – CEACR, observation, 2002.

<sup>68</sup> *El Salvador* – CEACR, observation, 2010.

autonomous official institutions, public officials and employees, and municipal employees). With reference to consultation procedures prior to the adoption of legislative provisions, the Committee has noted with interest, among other cases, the establishment in *Georgia*<sup>69</sup> of the National Social Dialogue Commission, as well as the creation of a tripartite working group to review and analyse the conformity of the national legislation with the comments of the Committee of Experts; and the preparation of the Fair Work Act, 2009, in *Australia*<sup>70</sup> through a process of extensive consultation with the social partners and key stakeholders.

## Main difficulties concerning the scope of application

58. The principal difficulties relating to the scope of application of Convention No. 87 concern the interpretation given by the legislation in certain countries to the exceptions authorized by *Article 9, paragraph 1, of the Convention*, namely the armed forces and the police and, more generally, the application of the Convention to public servants and to certain other categories of workers. The application of the Convention to fire service personnel, prison staff, magistrates and teachers has also been the subject of special attention by the Committee. It is the same for the application of the Convention to workers in the informal economy,<sup>71</sup> migrant workers, domestic workers, workers in export processing zones, as well as workers engaged under a disguised labour relationship (in the form of service contracts, for example). The Committee has also noted that a number of the sectors and groups of workers excluded from the right to organize and related rights are often predominantly female. The Committee therefore considers that it is important to examine the gender implications of the application of the Conventions to ensure that there is no direct or indirect discrimination against women. In the view of the Committee, all of these categories of workers should benefit from the rights and guarantees set forth in the Convention.

## Thematic issues

### Right of workers and employers to establish and to join organizations of their own choosing

#### Trade union rights and civil liberties

59. Freedom of association is a principle with implications that go well beyond the mere framework of labour law. Indeed, in the absence of a democratic system in which fundamental rights and civil liberties are respected, freedom of association cannot be fully developed. In addition, and particularly in situations where the law prohibits

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<sup>69</sup> *Georgia* – CEACR, observation, 2010.

<sup>70</sup> *Australia* – CEACR, observation, 2010.

<sup>71</sup> The term “informal economy” comprises all economic activities that are – in law or practice – not covered or insufficiently covered by formal arrangements. This term takes account of the considerable diversity of workers and economic units, in different sectors of the economy and across rural and urban contexts that are particularly vulnerable and insecure, that experience severe decent work deficits and that often remain trapped in poverty and low productivity. The informal economy includes wage workers and own-account workers, contributing family members and those moving from one situation to another, as well as some of those who are engaged in new flexible work arrangements and who find themselves at the periphery of the core enterprise or at the lowest end of the production chain. See *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO’s supervisory bodies related to the informal economy* (Geneva, ILO, 2010) p. 13.

democratic and pluralistic alternative voices in the political sphere, trade unions often become the catalyst for broader democratic developments. The resolution adopted by the Conference in 1970 concerning trade union rights and their relation to civil liberties reaffirms the essential link between civil liberties and trade union rights, which was already emphasized in the Declaration of Philadelphia (1944), and enumerates the fundamental rights that are necessary for the exercise of freedom of association, with particular reference to: (i) the right to freedom and security of person and freedom from arbitrary arrest and detention; (ii) freedom of opinion and expression, and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (iii) freedom of assembly; (iv) the right to a fair trial by an independent and impartial tribunal; and (v) the right to protection of the property of trade union organizations. ***The ILO supervisory bodies have since unceasingly stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations.***

60. The interdependence of respect for fundamental rights and freedom of association implies, in particular, that the public authorities cannot interfere in the legitimate activities of organizations by means of arrests or arbitrary detention, nor use the pretext of alleged criminal conduct against workers in view of their membership or legitimate trade union activities.<sup>72</sup> It also requires independent judicial investigations to be conducted rapidly in the case of allegations of violations of the rights and principles guaranteed by the Convention with a view to establishing the facts, violations and determining responsibilities, punishing the perpetrators and instigators and preventing the recurrence of such acts.<sup>73</sup> In this regard, the Committee recalls that excessive delays in the procedures set in motion in response to such allegations create, in practice, a situation of impunity, which reinforces the existing climate of violence and insecurity.<sup>74</sup> It also emphasizes the need for this purpose to provide specific training on freedom of association to the forces of order<sup>75</sup> with a view to avoiding violence and arbitrary arrests on the occasion of strikes and peaceful demonstrations by workers.<sup>76</sup>

61. ***The Committee notes with deep concern that murders of trade union leaders and members continue to occur in certain countries.***<sup>77</sup> ***Employers may also be the victims of murder***<sup>78</sup> ***and acts of intimidation.***<sup>79</sup>

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<sup>72</sup> See, for example, *Bangladesh, Cuba, Ecuador, Egypt, Gabon, Indonesia and Myanmar* – CEACR, observations, 2010.

<sup>73</sup> See, for example, *Cambodia, Egypt, Ecuador, Guinea, Honduras, Panama and Paraguay* – CEACR, observations, 2010; *Brazil* – CEACR, observation, 2010, Convention No. 98.

<sup>74</sup> See, for example, *Cambodia, Guatemala and Bolivarian Republic of Venezuela* – CEACR, observations, 2010.

<sup>75</sup> *Guatemala* – CEACR, observation, 2010.

<sup>76</sup> See, for example, *Indonesia, Myanmar and Turkey* – CEACR, observations, 2010.

<sup>77</sup> See, for example, *Colombia, Guatemala, Philippines, Panama and Bolivarian Republic of Venezuela*.

<sup>78</sup> See, for example, *Guatemala*.

<sup>79</sup> See, for example, *Bolivarian Republic of Venezuela*.

62. The Committee has, however, noted with satisfaction<sup>80</sup> some progress in this field, including the new legislation in *Colombia*,<sup>81</sup> under the terms of which the time limit for the prescription of acts punishable as the murder of a member of a legally recognized trade union organization shall be 30 years; that it shall be considered as an aggravating circumstance when the victims of murders are members of a trade union organization or the human rights ombudsperson; that any person who prevents a lawful assembly or the exercise of rights granted by labour laws, or engages in reprisals on grounds of strike action, assembly or lawful association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law; and that, in the event of threats or intimidation against a member of trade union organizations, the penalty shall be increased by one third. It has also noted with interest the commitment of the Government of the *Philippines*<sup>82</sup> to create a high-level tripartite monitoring body to review the progress made in investigating and prosecuting the cases of violence against trade unionists brought to the attention of the ILO supervisory bodies.

### Right of workers and employers, “without distinction whatsoever”, to establish and join organizations

63. In adopting the term “without distinction whatsoever” in *Article 2* of the Convention, rather than enumerating the various prohibited distinctions, the International Labour Conference emphasized that ***the right to organize should be guaranteed without distinction or discrimination of any kind*** and that it should be considered as the general principle, of which the only authorized exception is that set out in *Article 9, paragraph 1*, of the Convention. Indeed, the possibility de facto and de jure to establish organizations is the essential prerequisite for the proper functioning of freedom of association and free collective bargaining. However, although the majority of countries now recognize this right, the legislation in several countries continues to make distinctions that are incompatible with the principles established by the Committee, based on reasons such as the desire to obtain competitive advantage, to perpetuate control over workers or to take into consideration specific economic or cultural characteristics.

### Public service

64. In contrast with Convention No. 98, Convention No. 87 does not contain a provision excluding from its scope certain categories of public servants.<sup>83</sup> Accordingly, the Committee has always considered that ***the right to establish and join occupational organizations should be guaranteed for all public servants and officials***, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings.<sup>84</sup> Moreover, no distinction may be made based on

<sup>80</sup> For the Committee’s approach in relation to the identification of cases of progress, see: the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), ILC, 100th Session, Geneva, 2011, pp. 21–28, paras 61–67.

<sup>81</sup> *Colombia* – CEACR, observation, 2010.

<sup>82</sup> *Philippines* – CEACR, observation, 2010; Committee on Freedom of Association (CFA), Cases Nos 2528 and 2745.

<sup>83</sup> On this subject, see *Freedom of association and collective bargaining*, General Survey of the reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Report III (Part 4B), ILC, 81st Session, Geneva, 1994, paras 48 et seq.

<sup>84</sup> See, for example, *Cambodia* – CEACR, direct request, 2011 (concerning judges and workers employed on a permanent or temporary basis in the public service).

whether such employees are engaged on a permanent or temporary basis.<sup>85</sup> However, the terms used in the legislation of the different countries to refer to public servants vary and the same expressions do not necessarily cover the same persons. The freedom of association of workers in the public sector may also be established, not by legislation, but by common law.<sup>86</sup> In practice, although the legislation in many States now recognizes the right of employees in the public service to establish and join organizations, certain systems continue to deny the express or indirect recognition of this right, or draw distinctions as to the status and rights of the various categories of public servants. In certain cases, this right is denied to all personnel in the service of the State, or only for certain public servants.<sup>87</sup>

65. Other specific problems may arise. For example, certain countries do not allow organizations of employees in the public service to join the confederations of their choosing,<sup>88</sup> or only authorize public servants to establish “associations”, but not real trade union organizations within the meaning of the Convention,<sup>89</sup> even though these associations may sometimes be recognized de facto by the government so that they can participate in certain occupational negotiations.<sup>90</sup> In this context, the Committee has welcomed certain interesting cases of progress. Among others, it has noted with interest the adoption of the Act on the civil service in the *Dominican Republic*,<sup>91</sup> which establishes the right of civil servants to organize (including in federations and confederations), and provides that this right applies to all those employed in the service of the State, municipalities and autonomous entities, and guarantees special protection to the founders of associations and to some members of executive committees.

66. *Senior public officials.* Finally, a distinction is made in some countries between personnel and management in the public service with a view to limiting the right to organize of senior officials. The Committee is of the opinion that to bar these public servants from the right to join trade unions which represent other workers in the public sector is not necessarily incompatible with freedom of association, but on two conditions: (i) senior public officials should be entitled to establish their own organizations to

<sup>85</sup> See, for example, *Cambodia* – CEACR, direct request, 2010; and *Guatemala* – CEACR, observation, 2011 (particularly with regard to workers employed under budget item 029 for specific or temporary tasks).

<sup>86</sup> See, for example, *Guatemala* – CEACR, observation, 2010. In accordance with case law, workers engaged under item 029 who are not covered by the Civil Service Act and other budgetary items for specific or temporary tasks enjoy the right to organize.

<sup>87</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; *Gambia* – CEACR, direct request, 2010; *Indonesia* – CEACR, observation, 2010; *Liberia* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; *Panama* – CEACR, observation, 2011; *Romania* – CEACR, direct request, 2011; *Rwanda* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Anguilla)* – CEACR, direct request, 2010. In its report under art. 19 of the Constitution, the Government of *Japan* indicates that the basic labour rights of public service employees have been restricted due to the “public nature of their functions performed”, but that the issue remains under examination.

<sup>88</sup> See, for example, *Sri Lanka* – CEACR, observation, 2011. The same applies in India.

<sup>89</sup> With reference to prison staff, lighthouse keepers and workers in water and forestry services see, for example, *Morocco* – CEACR, direct request, 2011, Convention No. 98.

<sup>90</sup> See, for example, *Sri Lanka* – CEACR, observation, 2011 (nine federations of public service employees bargain directly with the ministry).

<sup>91</sup> *Dominican Republic* – CEACR, observation, 2010, Convention No. 98.



defend their interests; and (ii) the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities.<sup>92</sup>

#### *Police and armed forces*

67. ***Under Article 9, paragraph 1, of the Convention, the only authorized exceptions from the scope of application of the Convention concern members of the police and the armed forces.*** These exceptions are justified on the basis of the responsibility of these two categories of workers for the external and internal security of the State. In the view of the Committee, these exceptions must however be construed in a restrictive manner. For example, they do not include civilian personnel in the armed forces, fire service personnel, prison staff, customs and excise officials, civilian employees in the industrial establishments of the armed forces,<sup>93</sup> civilian employees in the intelligence services,<sup>94</sup> or employees of the legislative authority.<sup>95</sup> Nor do they automatically apply, in the view of the Committee, to all employees who may carry a weapon in the course of their duties, who cannot a priori be excluded from the scope of the Convention.<sup>96</sup>

68. In practice, as it is not always easy to determine whether workers belong to the military or to the police, in the view of the Committee workers should be considered as civilians in case of doubt.<sup>97</sup> For example, it considers that workers in private security firms<sup>98</sup> and members of the security services of civil aviation companies should be granted the right to establish organizations, in the same way as workers engaged in security printing services and members of the security or fire services of oil refineries, airports and seaports.<sup>99</sup>

#### *Fire service personnel and prison staff*

69. While the exclusion of the armed forces and the police from the right to organize is not contrary to the provisions of the Convention, the same cannot be said for fire service personnel and prison staff. Although in a number of countries they are denied the right to organize,<sup>100</sup> ***the Committee is of the opinion that the functions exercised by these two categories of public servants do not justify their exclusion from the rights and guarantees set out in the Convention.***

<sup>92</sup> General Survey, 1994, para. 57. See, for example, *Romania* – CEACR, direct request, 2011; *Turkey* – CEACR, observation, 2010 (exclusion from the right to organize of certain public employees, including senior public officials); and *Yemen* – CEACR, observation, 2011.

<sup>93</sup> See, for example, *Nigeria* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

<sup>94</sup> See, for example, *Czech Republic* – CEACR, direct request, 2011.

<sup>95</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; and *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011.

<sup>96</sup> See, for example, the report provided under art. 19 of the Constitution by the Government of Morocco.

<sup>97</sup> General Survey, 1994, para. 55.

<sup>98</sup> *El Salvador* – CEACR, direct request, 2010.

<sup>99</sup> *Pakistan* – CEACR, observation, 2010.

<sup>100</sup> With regard to the exclusion of prison staff: see, for example, *Bahamas* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2010; *Gambia* – CEACR, direct request, 2010; *Ghana* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, observation, 2011; *Morocco* – CEACR, direct request, 2011, Convention No. 98; *Namibia* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2010; *United Republic of Tanzania* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; *Zambia* – CEACR, observation, 2011; *Zimbabwe* – CEACR, observation, 2011. With regard to the exclusion of fire service personnel: see, for example, *Bangladesh* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2010; *Kazakhstan* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010. See also the report provided under art. 19 of the Constitution by the Government of Malaysia.

*Magistrates and teachers*

70. The freedom of association of magistrates (judges, clerks of courts and public prosecutors) and of teachers also continues to be subject to restrictions, and even prohibitions, in several countries, despite the general principle set out in *Article 2* of the Convention.<sup>101</sup> The Committee has therefore welcomed the progress achieved in this field and, among others, has noted with interest that the Act on the collective bargaining regime of prosecutors for criminal and penal affairs in the Province of Quebec (*Canada*) grants them the right to organize and protection in the exercise of trade union rights.<sup>102</sup> In the field of education and teaching, it has noted with satisfaction the adoption of new legislation on trade unions and employers' organizations in *Botswana*<sup>103</sup> extending the right to organize to the public services and to teachers. It has also noted with interest the adoption of the Colleges Collective Bargaining Act in Ontario (*Canada*), which allows part-time academic and support staff workers in colleges to join unions for collective bargaining purposes. Moreover, in the view of the Committee, it is not necessarily incompatible with the principles of freedom of association to deny managerial and executive staff the right to join the same trade unions as other workers in the sector, provided that they have the right to establish their own organizations to defend their interests.<sup>104</sup>

*Other categories of workers*

71. The Committee considers that other categories of workers who are regularly denied the right to establish trade unions must be covered by the principles set out in the Convention. These include, in particular, domestic workers (see below),<sup>105</sup> seafarers,<sup>106</sup> workers in the informal economy and those employed in export processing zones (see below), apprentices and workers during their probationary period,<sup>107</sup> self-employed workers,<sup>108</sup> workers without employment contracts,<sup>109</sup> agricultural workers,<sup>110</sup> certain

<sup>101</sup> With regard to restrictions on the freedom of association of magistrates: see, for example, *Armenia* – CEACR, direct request, 2011; *Burundi* – CEACR, observation, 2011; *Cambodia* – CEACR, direct request, 2010; *Chile* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; *Kazakhstan* – CEACR, observation, 2011; *Mauritania* – CEACR, observation, 2011; *Peru* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; *Ukraine* – CEACR, observation, 2011; *Yemen* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011. In its report under art. 19 of the Constitution, the Government of Morocco indicates that magistrates, irrespective of their status in the magistrature, cannot establish or join occupational unions (section 14 of the Dahir of 11 November 1974 issuing Act No. 1-74-467 establishing the statutes of the magistrature). With regard to restrictions on the freedom of association of teachers: see, for example, *Bangladesh* – CEACR, observation, 2010; and *Ethiopia* – CEACR, observations, 2010 and 2011.

<sup>102</sup> *Canada* – CEACR, observation, 2010.

<sup>103</sup> *Botswana* – CEACR, observation, 2005.

<sup>104</sup> General Survey, 1994, para. 66. See, for example, *Canada (Ontario)* – CEACR, observation, 2011; and *Ghana* – CEACR, direct request, 2010.

<sup>105</sup> With regard to the exclusion of domestic workers: see, for example, *Bangladesh* – CEACR, observation, 2010; *Canada (Ontario)* – CEACR, observation, 2010; *Eritrea* – CEACR, observation, 2011, Convention No. 98; *Gambia* – CEACR, direct request, 2010; *Kuwait* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2010; and *Yemen* – CEACR, observation, 2011.

<sup>106</sup> With regard to the exclusion of seafarers: see, for example, *Benin* – CEACR, observation, 2010; and *Madagascar* – CEACR, observation, 2011.

<sup>107</sup> With regard to the exclusion of this category of workers: see, for example, *Burkina Faso* – CEACR, direct request, 2011; and *Turkey* – CEACR, observation, 2010.

<sup>108</sup> With regard to the exclusion of self-employed workers: see for example, *Central African Republic* – CEACR, direct request, 2010; and *Turkey* – CEACR, observation, 2010.

workers in the health sector (personnel in establishments for the care of the sick, the aged and orphans)<sup>111</sup> and workers in charitable institutions.<sup>112</sup> The Committee also recalls that legislation should not prevent former workers and retirees from joining trade unions, if they so wish, particularly when they have participated in the activity represented by the union.<sup>113</sup>

72. In this context, the Committee has noted with satisfaction, among others, the adoption of new legislation in *Peru*<sup>114</sup> removing the denial of the right to trade union membership of workers during their probationary period. Finally, it has noted with interest the amendment of the legislation in the *Central African Republic*<sup>115</sup> allowing persons who have ceased to work or who have left the profession to continue to belong to a trade union.

#### Domestic workers

73. Finally, although trade unions have increased their efforts to reach out to domestic workers, the labour legislation in a number of countries still does not cover this category of workers, as a result of which there are no legal provisions applicable to them, including in relation to trade union rights, and they are not covered by labour inspection or enforcement institutions.<sup>116</sup> ***The Committee therefore regularly emphasizes the need to ensure not only that domestic workers are covered by the relevant legislation, but also that, in practice, they benefit from the guarantees set forth in the Convention.***<sup>117</sup> In this context, it has noted with satisfaction the recognition of the right to organize of domestic workers in *Swaziland*.<sup>118</sup> The right of domestic workers to establish and join organizations of their own choosing is now specifically formulated in the new Domestic Workers Convention, 2011 (No. 189).

#### Workers in export processing zones

74. In its report in 2009, ***the Committee observed with concern that there are significant lacunae in the application of Convention No. 87 with respect to workers in export processing zones (EPZs).***<sup>119</sup> Noting “the disparity between de jure and de facto

<sup>109</sup> *Poland* – CEACR, observation, 2011.

<sup>110</sup> With regard to the exclusion of agricultural workers: see, for example, *Bangladesh* – CEACR, observation, 2010; *Canada (Alberta, Ontario and New Brunswick)* – CEACR, observation, 2010 (with reference to agricultural and horticultural workers; *Honduras* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2010.

<sup>111</sup> With regard to the exclusion of workers in the health sector: see, for example, *Bangladesh* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2010.

<sup>112</sup> With regard to the exclusion of workers in charitable institutions: see, for example, *Bangladesh* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2010.

<sup>113</sup> *Turkey* – CEACR, observation, 2010.

<sup>114</sup> *Peru* – CEACR, observation, 2005.

<sup>115</sup> *Central African Republic* – CEACR, observation, 2010.

<sup>116</sup> See: Domestic Workers Convention, 2011, (No. 189), adopted at the 100th Session of the ILC, June 2011, and the preparatory work. See also the comments of the CEACR on the situation of domestic workers in the following countries: *Bangladesh* – CEACR, observation, 2009; *Canada (Ontario)* – CEACR, observation, 2010; *China (Macau Special Administrative Region)* – CEACR, observation, 2004; *Gambia* – CEACR, observation, 2010; *Haiti* – CEACR, observation, 2010 (a law to improve the living conditions of domestic workers is due to be enacted); and *Kuwait* – CEACR, observation, 2011.

<sup>117</sup> See, for example, *Mexico* – CEACR, observation, 2005.

<sup>118</sup> *Swaziland* – CEACR, observation, 2011.

<sup>119</sup> CEACR, general observation, Convention No. 87, 2009.

application of labour standards in EPZs and between EPZ workers and those not working in EPZs”, the Committee recalled that there are “around 3,500 EPZs throughout the world, operating in 120 countries and territories and employing around 66 million people” and found it “of particular concern when considering the importance of fundamental human rights, in particular equality of treatment, that there is often an extremely high proportion of women among EPZ workers deprived of their rights”. *The Committee therefore requests the governments concerned to provide information on the exercise in practice of trade union rights in EPZs and maquilas, particularly with regard to the access of the labour inspectorate and representatives of workers’ organizations to these zones.*<sup>120</sup> Among other measures, it has noted with interest in this respect the recent establishment of trade union organizations in the EPZ in *Togo*.<sup>121</sup>

### Workers in the informal economy

75. With regard to the informal economy, the Committee added that in many countries around the world “the informal economy represents between half and three-quarters of the overall workforce” and that, under the terms of the Convention, these workers have the right to organize and to collective bargaining, without distinction whatsoever, to establish and join organizations freely and to represent their members in relation to the public authorities in structures established for the purpose of social dialogue. Examination of the Committee’s comments “lends weight to the importance of the obstacles faced by” many of these workers and “in some cases, illustrates the dramatic impact that this has had on society overall”.<sup>122</sup>

76. The Committee has welcomed the innovative approaches adopted in certain countries to enable workers in the informal economy to organize. For example, it has noted with interest the indication by the International Trade Union Confederation that the amendment to the legislation and the efforts made by the authorities in *Uganda*<sup>123</sup> have contributed to a significant improvement in the exercise of trade union rights, and that in most sectors employers that had traditionally been hostile towards trade unions have agreed to recognize and negotiate with them, including in the textile industry. It has also noted that the legislation in *Mauritius*<sup>124</sup> now provides that every employee, citizen or not, holding a work permit, shall be entitled to be a member of a trade union; that sensitization campaigns are being undertaken to apprise migrant workers of the provisions of the employment relations legislation (including freedom of association); and that steps are being taken to collect information on the rate of unionization of migrant workers. However, the Committee observes that these positive initiatives are few in number and highly dispersed. *It therefore endorses the concern expressed in the resolution adopted by the Conference in 2002 concerning decent work and the informal economy, 2002, in which the ILO emphasizes the practical importance of*

<sup>120</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010. See also the comments on this subject in the context of Convention No. 98 concerning, for example, *Bangladesh* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Iceland* – CEACR, observation, 2010; *Mauritius* – CEACR, observation, 2011; *Nicaragua* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2011; and *Mozambique* – CEACR, direct request, 2011. See also: Committee on Freedom of Association, Case No. 2371 (*Bangladesh*), Report No. 337; and Case No. 2228 (*India*), Report No. 362.

<sup>121</sup> *Togo* – CEACR, observation, 2011.

<sup>122</sup> CEACR, general observation, Convention No. 87, 2009.

<sup>123</sup> *Uganda* – CEACR, observation, 2009, Convention No. 98.

<sup>124</sup> *Mauritius* – CEACR, observation, 2011.

***freedom of association for the effective improvement of working conditions in the informal economy, particularly for women and youth.***

#### Subcontracting and other means of circumventing the right to organize

77. Noting that situations exist in which contractual arrangements can have the effect of depriving workers of the protection that they are due, the Employment Relationship Recommendation, 2006 (No. 198), provides that national policy should at least include measures to “combat disguised employment relationships” and ensure “standards applicable to all forms of contractual arrangements”. ***The Committee therefore takes care to obtain information concerning the methods that are sometimes used in certain countries to circumvent the right to organize (including employment relationships disguised as civil contracts for the provision of services or the use of “work cooperatives” to cover actual employment relationships***<sup>125</sup>).<sup>126</sup>

#### Other forms of distinction

##### Distinction based on age

78. The legislation in most countries makes no distinction on grounds of sex, marital status or minimum age with regard to trade union membership, or explicitly prohibits any discrimination on these grounds. However, the Committee observes that, ***although it emphasizes the need to guarantee that minors who have reached the minimum legal age for admission to employment, both as workers and as apprentices, can exercise their trade union rights without parental authorization***, certain countries still make the trade union membership of minors under 18 or 16 years of age subject to the explicit authorization of their parents or guardians, or maintain a divergence between the minimum age for admission to employment and the minimum age for trade union membership.<sup>127</sup>

##### Distinction based on nationality or residence

79. ***The right of workers, without distinction whatsoever, to establish and join organizations of their own choosing implies that anyone residing in the territory of a State, whether or not they have a residence permit, benefits from the trade union rights provided for by the Convention, without any distinction based on nationality.***<sup>128</sup>

In other words, in the view of the Committee, migrant workers have the right, under the same conditions as nationals, to benefit from the fundamental rights deriving from freedom of association. Although the law and practice of the majority of countries recognizes the right of migrant workers to join trade unions, the law in several countries still contains restrictions of varying degrees of importance relating to nationality and residence. Certain States continue to make citizenship a requirement for the

<sup>125</sup> See, for example, *Colombia* – CEACR, observation, 2010. In its report under art. 19 of the Constitution, the Government of *Turkey* proposes that ILO standard-setting action on subcontracting should be envisaged in view of the inequalities that subcontracting creates between workers in the same jobs.

<sup>126</sup> On the subject of subcontracting, see, for example: Committee on Freedom of Association, Case No. 2602 (Republic of Korea), Report No. 350, para. 671; and Case No. 2151 (*Colombia*), Report No. 330, para. 540.

<sup>127</sup> See, for example, *Burkina Faso* – CEACR, direct request, 2011; *Burundi* – CEACR, observation, 2011; *Chad* – CEACR, observation, 2010; *Djibouti* – CEACR, direct request, 2011; *Mali* – CEACR, direct request, 2011; *Mauritania* – CEACR, observation, 2011; *Central African Republic* – CEACR, observation, 2010; *Romania* – CEACR, direct request, 2011; *Senegal* – CEACR, observation, 2011; *Sri Lanka* – CEACR, observation, 2011; *Togo* – CEACR, direct request, 2011; and *Tunisia* – CEACR, observation, 2011.

<sup>128</sup> See, for example, *Albania* – CEACR, direct request, 2010. ILO instruments apply to irregular migrant workers, unless otherwise stated (see the resolution adopted by the Conference in 2004 concerning a fair deal for migrant workers in a global economy, para. 28).

establishment of trade unions, or determine the proportion of members who have to be nationals,<sup>129</sup> or subject the trade union membership of foreign nationals to conditions of residence and/or reciprocity.<sup>130</sup>

80. The Committee has therefore welcomed the recent adoption of legislation extending the right to organize to foreign workers, among others, in *El Salvador*<sup>131</sup> and *Kuwait*,<sup>132</sup> or removing reciprocity requirements, for example in the *Syrian Arab Republic*.<sup>133</sup> In particular, it has noted with satisfaction the ruling by the Constitutional Court in *Spain*,<sup>134</sup> which found a provision unconstitutional that required foreign nationals to be legally resident in the country in order to benefit from the right to organize or to join an occupational organization freely under the same conditions as those applicable to nationals.

#### Distinction based on political opinion

81. The Committee considers that any legislative or regulatory measure, or any practice,<sup>135</sup> whereby an individual is deprived of his or her right to become or remain a trade union member for expressing certain political opinions or participating in political activities (except those which advocate violence) constitutes an infringement of the right to organize, as recognized in *Article 2* of the Convention.

#### Right to establish organizations “without previous authorization”

82. The legislation in many countries explicitly provides that workers and employers have the right to establish organizations without previous authorization. While, in most countries, legislation requires certain formalities to be observed for this purpose, in other countries, no formalities whatsoever are imposed.<sup>136</sup> In the view of the Committee, regulations providing for formalities are not in themselves incompatible with the Convention, provided that they do not in practice impose a requirement of “previous authorization”, in violation of *Article 2*, or give the authorities discretionary power to refuse the establishment of an organization; nor must they constitute such an obstacle that they amount in practice to a pure and simple prohibition.<sup>137</sup> It also emphasizes that provision should be made for the possibility of an appeal against any administrative

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<sup>129</sup> See, for example, *Algeria* – CEACR, observation, 2010; and *Libya* – CEACR, direct request, 2011.

<sup>130</sup> See, for example, *Central African Republic* – CEACR, observation, 2010; and *Philippines* – CEACR, observation, 2011.

<sup>131</sup> *El Salvador* – CEACR, observation, 2010.

<sup>132</sup> *Kuwait* – CEACR, observation, 2011.

<sup>133</sup> *Syrian Arab Republic* – CEACR, observation, 2002.

<sup>134</sup> *Spain* – CEACR, observation, 2011. Furthermore, in its report under art. 19 of the Constitution, the Government of New Zealand indicates that freedom of association can be exercised at the enterprise, sector/industry and national and international levels by the following categories of workers: “all workers in the public service, medical professionals, teachers, agricultural workers, workers engaged in domestic work, migrant workers, workers of all ages and workers in the informal economy”.

<sup>135</sup> See, for example, Committee on Freedom of Association, Case No. 2258 (*Cuba*), Report No. 332, para. 515.

<sup>136</sup> In its report under art. 19 of the Constitution, the Government of the United States indicates that there is no requirement that a union be registered in order to be recognized under United States law, nor are there any general conditions that must be fulfilled by workers’ and employers’ organizations when they are being established. Most such organizations are unincorporated, voluntary associations. However, the Labor-Management Reporting and Disclosure Act, 29 U.S.C., sections 401–531, does establish a number of requirements relating to the functioning of labour organizations.

<sup>137</sup> General Survey, 1994, paras 68 et seq. See, for example, *Cameroon* – CEACR, observation, 2010 (the legal existence of a trade union is subject to the prior approval of the Minister for Territorial Administration).

decision of this kind to be examined without delay by an independent and impartial jurisdiction.<sup>138</sup>

#### *Filing of by-laws and registration*

83. The formalities covered by the concept of “registration” vary according to the legislation of each country. In most cases, registration confers significant advantages (special immunities, tax exemptions, the right to have recourse to dispute settlement machinery, the right to be recognized as a bargaining agent, etc.). However, ***in the view of the Committee, although the official recognition of an organization through its registration constitutes a relevant aspect of the right to organize, as it is the first measure to be taken so that organizations can fulfil their role effectively,***<sup>139</sup> ***the exercise of legitimate trade union activities should not be dependent upon registration.***<sup>140</sup>

84. In some cases, the legislation merely requires the by-laws to be deposited, possibly with details of the number of members and the composition of the executive bodies, enabling the authority responsible for registration to verify that the organization is in conformity with the provisions of the legislation; in such cases, the competent authority does not normally have discretionary power. However, in other cases, the legislation does not clearly define the procedures for the formalities which have to be observed or the reasons which may be given for refusal, and confers upon the competent authority a discretionary power to accept or refuse an application for registration, which may be tantamount in practice to imposing “previous authorization”, which is incompatible with Article 2 of the Convention.<sup>141</sup> This is the case, for example, in countries in which discretionary power is exercised through the authority granted to the registrar,<sup>142</sup> or which make the decision concerning registration subject to approval by a specific authority<sup>143</sup> or a report of an investigation prepared by the labour inspectorate.<sup>144</sup>

85. Other problems of compatibility with the Convention also arise where the registration procedure is so long and complex as to undermine freedom of association.<sup>145</sup> With a view to resolving this issue, ***the Committee considers in particular that: (i) it is important to allow organizations seeking registration adequate time to rectify any difficulties related to registration through their representatives, rather than obliging them to recommence the procedure from the beginning;***<sup>146</sup> ***and***

<sup>138</sup> General Survey, 1994, para. 106.

<sup>139</sup> *Ethiopia* – CEACR, observation, 2011.

<sup>140</sup> *Belarus* – CEACR, observation, 2011.

<sup>141</sup> General Survey, 1994, paras 73–74.

<sup>142</sup> See, for example, *Bahamas* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Saint Vincent and the Grenadines* – CEACR, direct request, 2011; and *Seychelles* – CEACR, observation, 2011.

<sup>143</sup> See, for example, *Haiti* – CEACR, observation, 2010. In its report under art. 19 of the Constitution, the Government of the Islamic Republic of Iran indicates that trade unions may be established in the country on condition that they “do not impair the principles of independence, freedom, national solidarity, Islamic precepts and the founding ideals of the Islamic Republic”.

<sup>144</sup> See, for example, *Djibouti* – CEACR, observation, 2011.

<sup>145</sup> See, for example, *Ethiopia* – CEACR, observation, 2011 (concerning the excessive duration of the registration procedure for an organization of teachers); *Guatemala* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011 (the period necessary for registration should be reduced to a reasonable duration of not more than 30 days); *Romania* – CEACR, direct request, 2011; *United Republic of Tanzania* – CEACR, observation, 2011 (no set duration); *Uganda* – CEACR, direct request, 2011; and *Zambia* – CEACR, observation, 2011 (up to six months).

<sup>146</sup> *Armenia* – CEACR, direct request, 2011.

*the authorities entrusted with registration should cooperate fully in the resolution of such difficulties; (ii) in cases in which, to be able to lodge a new application for the establishment of a union, the law requires a certain period to have elapsed since the previous application, this period cannot be too long (for example, the Committee has requested the abolition of a period amounting to at least six months);*<sup>147</sup> *and (iii) the period required for the publication of the by-laws of the organization in the official journal must also be reasonable.*<sup>148</sup> The Committee also considers that amendments made to trade union by-laws should be effective once they have been approved by the competent bodies of the trade union and notified to the competent authority.<sup>149</sup> Finally, it recalls the importance of ensuring the confidentiality of the processing of data on trade union membership in the context of the registration procedure,<sup>150</sup> not only because they relate to the private life of workers, but also because they could expose workers to possible reprisals.

86. In this context, the Committee has noted with satisfaction the removal of provisions which allowed the courts in *Australia (Queensland)*<sup>151</sup> to order the deregistration of an organization on the grounds that the organization or its members had engaged in industrial action that had prevented or interfered with trade or commerce; as well as the adoption of legislation facilitating the registration of trade unions in *Botswana*;<sup>152</sup> and the limitation of the powers conferred upon the registrar to refuse an application for the merger of trade unions in *Fiji*.<sup>153</sup>

#### *Recognition of legal personality*

87. By virtue of *Article 7* of the Convention, legal personality should not be refused to organizations when they fulfil the requirements envisaged by the law and its acquisition cannot be made subject to conditions of such a character as to restrict the application of *Articles 2, 3 and 4* of the Convention. The Committee considers that in no event must the conditions for obtaining legal personality, if any, be such as to amount to a de facto requirement of previous authorization. It has noted with interest a ruling handed down recently to this effect by the Constitutional Court of *Colombia*,<sup>154</sup> which found that the registration of the founding statutes of an organization only fulfils functions of publicity, without authorizing the ministry to carry out prior controls of the content of the statute. However, it has considered that legislation is not in conformity with the Convention which, for example, requires a first-level organization to represent at least 50 workers to be able to acquire legal personality,<sup>155</sup> or requiring trade unions, in order to acquire legal personality, to be members of higher level organizations.<sup>156</sup>

<sup>147</sup> *El Salvador* – CEACR, direct request, 2010.

<sup>148</sup> See, for example, *Cape Verde* – CEACR, direct request, 2010.

<sup>149</sup> *Romania* – CEACR, direct request, 2011.

<sup>150</sup> *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>151</sup> *Australia (Queensland)* – CEACR, observation, 2006.

<sup>152</sup> *Botswana* – CEACR, observation, 2005.

<sup>153</sup> *Fiji* – CEACR, observation, 2008.

<sup>154</sup> *Colombia* – CEACR, observation, 2010 (ruling No. 695 of 2008 of the Constitutional Court).

<sup>155</sup> *Equatorial Guinea* – CEACR, observation, 2011.

<sup>156</sup> *Republic of Moldova* – CEACR, observation, 2011.



*Appeals to the courts*

88. Trade unions should have the right to appeal to impartial and independent courts against any administrative decision relating to their registration.<sup>157</sup> However, ***in the view of the Committee, the existence of the right to appeal to a court is not in itself an adequate safeguard; the competent judges should be able, on the basis of the record, to review the grounds for refusal given by the administrative authorities, which should not be contrary to the principles of freedom of association.*** They should also be empowered to give a ruling rapidly and, where necessary, to order appropriate remedies.<sup>158</sup>

## Right of workers and employers to establish organizations “of their own choosing”

*Structure and composition of organizations: Minimum membership*

89. Under *Article 2* of the Convention, workers and employers have the right to establish and join organizations “of their own choosing”, subject only to the rules of the organization concerned. This right, which is essential if there is to be genuine freedom of association, has significant implications for the determination of the structure and membership of the organizations concerned. In many countries, an occupational organization may not be established unless it has a minimum number of members. In the view of the Committee, although this requirement is not in itself incompatible with the Convention, ***the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered.*** It also considers that this criterion should be assessed in relation to the level at which the organization is to be established (for example, at the industry or enterprise level) and the size of the enterprise.<sup>159</sup> Indeed, the requirement of a minimum membership that is too high may in practice preclude the establishment of more than one organization in a specific occupation, sector or enterprise.<sup>160</sup> The minimum membership may be higher for branch unions although, once again, excessive requirements could prevent the development of trade unions.

90. In practice, the Committee observes that the requirements relating to minimum membership continue to be excessive in a number of countries, both for workers’ organizations<sup>161</sup> and for employers’ organizations.<sup>162</sup> It has accordingly noted with

<sup>157</sup> This issue has been raised by the Committee in relation to the following countries: *Cape Verde* – CEACR, direct request, 2010; *Djibouti* – CEACR, direct request, 2011; and *Rwanda* – CEACR, direct request, 2011.

<sup>158</sup> General Survey, 1994, paras 77 and 106.

<sup>159</sup> See, for example, *Latvia* – CEACR, direct request, 2011; and *Nigeria* – CEACR, observation, 2011. For example, the Committee considers that the requirement of ten members to establish an employers’ organization and 40 to establish a workers’ organization at the enterprise level is too high (see, for example, *Panama* – CEACR, observation, 2011).

<sup>160</sup> Taking into account the fact that in a large number of countries small and medium-sized enterprises are preponderant, the Committee considers that the number of workers required to establish an enterprise union in small and medium-sized enterprises should be lower than 30 workers (see, for example, *Ecuador* – CEACR, observation, 1999).

<sup>161</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; *El Salvador* – CEACR, direct request, 2010; *Ecuador* – CEACR, observation, 2010; *Gambia* – CEACR, direct request, 2010; *Equatorial Guinea* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Latvia* – CEACR, direct request, 2011; *Paraguay* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>162</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2010; *Ghana* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, observation, 2011; *Kiribati* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Serbia* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

satisfaction the progress achieved in this field, including the removal of any requirement relating to minimum membership for the establishment of workers' and employers' organizations in *Portugal*,<sup>163</sup> and the reduction in the number of workers required for the establishment of a trade union in *Chile*<sup>164</sup> and *Peru*,<sup>165</sup> and for the establishment of an employers' organization in *Mauritius*.<sup>166</sup>

#### *Right to join several organizations*

91. In the Committee's opinion, it is important to allow workers in the private and public sectors who are engaged in more than one job in different occupations or sectors to join the corresponding unions as full members (or at least, if they so wish, to join trade unions at the branch level as well as the enterprise level at the same time).<sup>167</sup> In other words, ***obliging workers to only join one trade union could unduly prejudice their right to establish and join organizations of their own choosing***.<sup>168</sup> However, the legislation in certain countries stipulates that members of a trade union must belong to the same or a similar profession, occupation or branch of activity,<sup>169</sup> or imposes a general structure on the trade union movement.<sup>170</sup> In the view of the Committee, such restrictions may only eventually be applied to first-level organizations on condition that these organizations are free to establish inter-occupational organizations and to join federations and confederations in the form and manner deemed most appropriate by the workers or employers concerned.<sup>171</sup> In this context, it has noted with interest the repeal in *Turkey*<sup>172</sup> of constitutional provisions prohibiting membership of more than one trade union.

#### *Trade union monopoly*

92. Although it is generally to the advantage of workers and employers to avoid a proliferation of competing organizations, the right of workers to be able to establish organizations of their own choosing, as set out in *Article 2* of the Convention, implies that trade union diversity must remain possible in all cases. The Committee considers that it is important for workers to be able to change trade union or to establish a new union for reasons of independence, effectiveness or ideological choice. Consequently, ***trade union unity imposed directly or indirectly by law is contrary to the Convention***.

<sup>163</sup> *Portugal* – CEACR, observation, 2005.

<sup>164</sup> *Chile* – CEACR, observation, 2002.

<sup>165</sup> *Peru* – CEACR, observation, 2005.

<sup>166</sup> *Mauritius* – CEACR, observation, 2011.

<sup>167</sup> *El Salvador* – CEACR, direct request, 2010.

<sup>168</sup> With regard to the prohibition on joining or establishing more than one trade union see, for example, *Bangladesh* – CEACR, observation, 2010; *Egypt* – CEACR, direct request, 2011; *Fiji* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Pakistan* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; and *Romania* – CEACR, direct request, 2011.

<sup>169</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010 (section 6(2) of the Industrial Relations Act); and *Zambia* – CEACR, observation, 2011 (restriction of trade union membership to workers in the same sector, trade or industry).

<sup>170</sup> See, for example, *Panama* – CEACR, observation, 2011 (not more than one association in an institution, and organizations may not have more than one chapter per province).

<sup>171</sup> General Survey, 1994, para. 84.

<sup>172</sup> *Turkey* – CEACR, observation, 2011.

93. In practice, the legislation in certain countries continues to explicitly prescribe a single trade union system,<sup>173</sup> either for first-level organizations (by only allowing the establishment of one organization for all the workers in an enterprise, occupation or branch of activity, or in a specific public body), or at all levels of trade union organization.<sup>174</sup> Other systems have the indirect result that it is impossible to establish a second organization representing workers' interests, for example by attributing trade union functions to a specifically designated trade union committee, or by fixing as the minimum membership for the establishment of an organization at least 50 per cent of the workers concerned, thereby making it impossible to establish several organizations.<sup>175</sup> With a view to resolving certain of these difficulties, the Committee requests that any specific designation of a particular organization in law be replaced by a neutral reference to the "most representative" organization.<sup>176</sup>

94. Other forms of trade union monopoly raise problems of compatibility with the Convention, for example where the law requires trade unions to be grouped together in a single federation or confederation;<sup>177</sup> or makes the establishment of a new trade union subject to the approval of the trade union which already exists; or requires first-level organizations to conform to the constitution of the single existing central organization, or obliges them to affiliate with that organization.<sup>178</sup> Finally, provisions regulating registration may also result in the imposition of a trade union monopoly, particularly if the competent authorities have discretionary power to refuse the registration of a trade union if another trade union already exists.<sup>179</sup> In this context, the Committee has welcomed the recent removal of references to trade union unity in the national legislation in several countries, including the *Central African Republic*,<sup>180</sup> *Ethiopia*,<sup>181</sup> *Russian Federation*,<sup>182</sup> *Kuwait*,<sup>183</sup> *Republic of Moldova*<sup>184</sup> and *United Republic of Tanzania*.<sup>185</sup>

<sup>173</sup> In its report under art. 19 of the Constitution, the Government of Brazil indicates that the right is guaranteed to establish trade unions in full freedom, including for public employees. However, there cannot be more than one union of the same category in the same municipality. Other countries continue to provide for a system of trade union monopoly, such as: *Belarus* – CEACR, observation, 2007; *Iraq* – CEACR, observation, Convention No. 98, 2010; *Libya* – CEACR, direct request, 2011; *Syrian Arab Republic* – CEACR, observation, 2011; *Turkmenistan* – CEACR, direct request, 2011; and *Yemen* – CEACR, observation, 2011. See also: Committee on Freedom of Association, Case No. 2258 (*Cuba*), 332nd Report, para. 514.

<sup>174</sup> General Survey, 1994, para. 91. See, for example, *Egypt* – CEACR, observation, 2011.

<sup>175</sup> See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Guatemala* – CEACR, observation, 2011.

<sup>176</sup> See, for example, *Canada* – CEACR, observation, 2010 (concerning the need for the governments of Prince Edward Island, Nova Scotia and Ontario to remove the specific designation in the legislation of individual trade unions as bargaining agents); and *Cuba* – CEACR, observation, 2010.

<sup>177</sup> See, for example, *Kuwait* – CEACR, observation, 2011; and *Syrian Arab Republic* – CEACR, observation, 2011.

<sup>178</sup> *Cuba* – CEACR, observation, 2010.

<sup>179</sup> *Nigeria* – CEACR, observation, 2011 (section 3(2) of the Trade Union Act).

<sup>180</sup> *Central African Republic* – CEACR, observation, 2010.

<sup>181</sup> *Ethiopia* – CEACR, observation, 2006.

<sup>182</sup> *Russian Federation* – CEACR, observation, 2003.

<sup>183</sup> *Kuwait* – CEACR, observation, 2011: however, trade union pluralism is still not ensured at the level of federations.

<sup>184</sup> *Republic of Moldova* – CEACR, observation, 2002.

<sup>185</sup> *United Republic of Tanzania* – CEACR, observation, 2005.

*Coercion or favouritism by the public authorities*

95. Favouritism or discrimination by the authorities in relation to one or more workers' or employers' organizations may take various forms: pressure exerted on organizations in public statements by the authorities; unequally distributed aid; premises provided for holding meetings or activities to one organization, but not to another; refusal to recognize the officers of some organizations in the exercise of their legitimate activities, etc.<sup>186</sup> In the view of the Committee, ***any unequal treatment of this kind compromises the right of workers or employers to establish and join organizations of their own choosing.***

*Recognition of the most representative trade unions*

96. In an attempt to establish a proper balance between imposed trade union unity, which is incompatible with the Convention, and the excessive multiplication of trade unions, the legislation in some countries establishes the concept of the "most representative trade unions", which are granted a variety of rights and advantages. There are different methods to determine the most representative trade unions and the manner in which they jointly or separately engage in collective bargaining. In the view of the Committee, this concept is not in itself contrary to the principle of freedom of association, but must be accompanied by certain conditions, namely: (i) the determination of the most representative organizations must be based on objective, pre-established and precise criteria, so as to avoid any possibility of bias or abuse;<sup>187</sup> and (ii) the distinction should be limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations).<sup>188</sup>

97. ***The Committee wishes to emphasize that workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the prohibition of other trade unions which workers would like to join, or in the granting of privileges such as to influence unduly the choice of organization by workers.***<sup>189</sup> This distinction should not therefore have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means of defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), of organizing their administration and activities, and formulating their programmes, as provided for in the Convention.<sup>190</sup>

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<sup>186</sup> General Survey, 1994, para. 104.

<sup>187</sup> The Committee has, for example, noted with satisfaction the information that a political agreement was found in *Belgium* with a view to establishing quantitative and qualitative criteria (being constituted at national level and operating on an inter-occupational basis; representing the majority of sectors and staff categories in the public and private sectors; having a minimum number of paid-up members; and including the defence of workers' interests among the objectives laid down by its rules) that would have to be met by the most representative organizations which wished to be represented on the National Labour Council (*Belgium* – CEACR, observation, 2010).

<sup>188</sup> General Survey, 1994, para. 97; see, for example, Committee on Freedom of Association, Case No. 2843 (*Ukraine*), Report No. 362.

<sup>189</sup> See, for example, *Argentina* – CEACR, observation, 2011 (concerning sections 38, 48 and 52 of the Act on Trade Union Associations (No. 23551) of 1998); and *Botswana* – CEACR, observation, 2011 (concerning section 48B(1) of the Trade Union and Employers' Organizations Act).

<sup>190</sup> General Survey, 1994, para. 98. See, for example, Committee on Freedom of Association, Case No. 2805 (*Germany*), Report No. 362.

98. Finally, the Committee considers that systems are compatible with the Convention under which only one bargaining agent may be certified to represent the workers of any given bargaining unit, which gives it the exclusive right to negotiate the collective agreement and to monitor its implementation, provided that legislation or practice impose on the exclusive bargaining agent an obligation to represent fairly and equally all workers in the bargaining unit, whether or not they are members of the trade union.<sup>191</sup>

*Trade union security and the right not to join an organization*

99. Although, in several countries, the law guarantees directly or indirectly the right not to join a trade union organization and forbids the exercise of any constraint to oblige a person to join or support a trade union, in other countries the law allows “union security” clauses in collective agreements or arbitration awards. Nevertheless, the legislation in many countries does not authorize clauses of this type, and they have even been found unconstitutional by certain supreme courts.<sup>192</sup> Union security clauses are intended, for example, to make trade union membership compulsory or to require the payment of dues by workers who are not members (agency fees) and who benefit from the advantages of the collective agreement negotiated by the union.<sup>193</sup> In the view of the Committee, and in accordance with the preparatory work, *Article 2* of the Convention leaves it to the practice and regulations of each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice. The only condition imposed by the Committee is that such clauses are the result of free negotiation between workers’ organizations and employers including public employers.<sup>194</sup> On the other hand, compulsory contribution towards the maintenance of trade unions or employers’ associations, imposed by law, runs against the right to freely join the organization of one’s own choosing. It becomes especially problematic if these contributions are collected by the Government which has not been party to the negotiation of such clauses, and eventually distributed to trade unions or employers’ organizations, since such a degree of involvement raises concerns as to possible undue interference of the State in their activities.

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<sup>191</sup> General Survey, 1994, para. 99.

<sup>192</sup> See, for example, *Mexico*.

<sup>193</sup> For example, in the United States, non-union members may be required to pay a fair share for agency services (*International Association of Machinists v. Street*, 367 US 740 (1961)).

<sup>194</sup> General Survey, 1994, paras 100 et seq.

## Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities

### Drawing up of constitutions and rules

100. Two conditions have to be met to guarantee fully the right of workers' and employers' organizations to draw up their constitutions and rules: (i) national legislation should only lay down formal requirements respecting trade union constitutions, except with regard to the need to follow a democratic process<sup>195</sup> and to ensure a right of appeal for the members; and (ii) the constitutions and rules should only be subject to the verification of formal requirements by the authorities. Legislative provisions which go beyond these formal requirements may, in the view of the Committee, constitute interference contrary to *Article 3, paragraph 2*, of the Convention. However, in practice, several States continue to authorize certain types of interference by the public authorities, which may take different forms: a first-level trade union may be required to conform to the constitution of a single federation; the constitution of a new trade union may be subject to approval by the central administration of the existing organization; the constitutions may have to be drawn up by the public authorities; trade unions may be required to follow a model constitution which contains more than certain purely formal clauses; etc.

#### **Freedom of association, gender equality and non-discrimination**

The Committee recalls that the ILO Declaration on Social Justice for a Fair Globalization highlights freedom of association and the effective recognition of the right to collective bargaining as enabling rights for the attainment of the other ILO strategic objectives. Gender equality and non-discrimination are also highlighted as cross-cutting issues. The Committee has consistently emphasized that the rights under Conventions Nos 87 and 98 should be guaranteed without distinction or discrimination of any kind as to occupation, sex, colour, race, religion, national extraction, political opinion or social origin. For its part, the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), provides that the national policy for the prevention of discrimination in employment and occupation should have regard to a number of principles, including the following: that employers' and workers' organizations should not practice or countenance discrimination in respect of admission, retention of membership or participation in their affairs; and that in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no discriminatory provisions.

The Committee notes that trade unions and employers' organizations have, for many years, been instrumental in promoting equality in employment and opportunities, in particular through the collective bargaining process. In collective agreements, specific consideration has been given to equality and non-discrimination based on a range of grounds, including and often going beyond those set out in Convention No. 111, namely race, colour, sex, religion, political opinion, national extraction or social origin. Other grounds that have been touched upon in collective agreements include age, sexual orientation, disability, physical characteristics and HIV and AIDS. Provisions have also been included in collective agreements aimed at reinforcing

<sup>195</sup> For example, in its report under art. 19 of the Constitution, the Government of the United States indicates that the legislation (the Labor-Management Reporting and Disclosure Act, 29, U.S.C., section 411) provides a "Bill of Rights" for members of unions to assure certain basic rights to all union members. All union members have equal rights in nominating candidates for union office, voting in union elections, and attending and participating in membership meetings.

equality at the workplace and further assisting both women and men to reconcile work and family responsibilities, including provision for flexible working arrangements and family-related leave. In some countries, an analysis is being undertaken of the different impact on men and women of provisions in collective agreements, with a view to ensuring that they do not indirectly discriminate against women, and that they promote equal remuneration for men and women for work of equal value.

A number of trade unions and employers' organizations have also been seeking ways to make their own membership and executive bodies more representative, by establishing quotas or targets for women or minority groups, or by offering services of particular relevance to certain under-represented groups. The Committee welcomes and encourages these voluntary initiatives.

## Freedom to elect representatives

### *Election procedures*

101. In the majority of countries, the law recognizes, implicitly or explicitly, the principle of the election of trade union officers by the members. However, while the law in certain countries provides only that the constitutions of trade union organizations must indicate the procedure for appointing their executive bodies, or is intended to promote democratic principles within trade unions or to ensure the proper conduct of the election process, in other cases it allows arbitrary interference by the authorities in elections, which is incompatible with *Article 3, paragraph 1*, of the Convention. This is the case, for example, of provisions which establish very precise rules on the subject of elections or which allow control over the electoral procedure by the administrative authorities or the single trade union central organization<sup>196</sup> (for example, requiring the compulsory presence of a labour inspector or a representative of the administration,<sup>197</sup> or the acceptance or approval of elections and their results). ***With regard to the logistical support that could be provided by a public electoral authority for the organization of elections, the Committee considers that such assistance should only be provided if the organizations so request, in accordance with their constitutions.***<sup>198</sup>

### *Conditions of eligibility of representatives*

#### Requirement to belong to an occupation or to an enterprise, and service requirements

102. The requirement to belong to an occupation or to an enterprise, either at the time of their candidature, or during a certain period before their election,<sup>199</sup> to be able to hold trade union office is a requirement that is frequently set out in trade union constitutions, and is sometimes also imposed by national law.<sup>200</sup> Failure to comply with this legal obligation is even sometimes punishable with imprisonment, which the Committee

<sup>196</sup> See, for example, *Egypt* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2010 (concerning the powers of the National Electoral Council).

<sup>197</sup> See, for example, *Bahamas* – CEACR, observation, 2010.

<sup>198</sup> General Survey, 1994, paras 113–115.

<sup>199</sup> See, for example, *Burundi* – CEACR, observation, 2011, and direct request, 2010 (seniority of at least one year and at least three years in the public service); *Cambodia* – CEACR, direct request, 2011 (one year); *Fiji* – CEACR, observation, 2010 (six months); and *Libya* – CEACR, direct request, 2011 (four years).

<sup>200</sup> See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Mauritania* – CEACR, observation, 2005, and direct request, 2011; *Panama* – CEACR, observation, 2011; and *Uganda* – CEACR, direct request, 2011.

considers unacceptable.<sup>201</sup> This requirement may also be imposed indirectly when the law requires members of trade unions to belong to the occupation concerned, coupled with the requirement that the officers of the organization be chosen from among its members.<sup>202</sup> In the view of the Committee, provisions of this type infringe the right of organizations to draw up their constitutions and to elect representatives in full freedom by preventing qualified persons (such as full-time union officers or pensioners) from being elected, or by depriving them of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. There is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office.<sup>203</sup> ***The Committee therefore considers that such legislative provisions should be more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization.***

#### Nationality, age and literacy

103. The need to be a national of the country concerned is a condition of eligibility for trade union office imposed by several States.<sup>204</sup> Such provisions prevent the election of migrant workers or foreign nationals. In some cases, this requirement is reduced when there is a reciprocity condition between countries,<sup>205</sup> or where exemptions may be granted by the competent authorities.<sup>206</sup> ***The Committee considers that national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country.***<sup>207</sup> For example, it has considered that the requirement of a period of residence of 20 years for access to trade union office was excessive,<sup>208</sup> but that a period of three years could be considered as being reasonable.<sup>209</sup> It has therefore noted with satisfaction the progress achieved in recent years in relation to the access of foreign workers to trade union office in certain

<sup>201</sup> See, for example, *Pakistan* – CEACR, observation, 2011 (section 27-B of the Banking Companies Ordinance of 1962).

<sup>202</sup> See, for example, *Mauritania* – CEACR, observation, 2005, and direct request, 2011.

<sup>203</sup> See, for example, *Peru* – CEACR, direct request, 2011 (requirement to be in employment to be able to hold trade union office).

<sup>204</sup> See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation, 2010; *El Salvador* – CEACR, direct request, 2010; *Ecuador* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Mexico* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

<sup>205</sup> See, for example, *Central African Republic* – CEACR, direct request, 2010.

<sup>206</sup> See, for example, *Malaysia* – CEACR, observation, 2011, Convention No. 98, (with the authorization of the minister); and *Tunisia* – CEACR, observation, 2011 (with the approval of the Secretary of State for Youth, Sport and Social Affairs).

<sup>207</sup> See, for example, *Bolivarian Republic of Venezuela* – CEACR, observation, 2011 (a draft text envisages reducing from ten to five years the period of residence necessary for this purpose). See also Art. 10 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), under the terms of which migrant workers have to benefit from equality of opportunity and treatment in respect of, among other matters, trade union rights, and Paragraph 2(g) of the Migrant Workers Recommendation, 1975 (No. 151), under the terms of which the policy of equality of opportunity and treatment should include eligibility for office in trade unions.

<sup>208</sup> *Democratic Republic of the Congo* – CEACR, direct request, 2011.

<sup>209</sup> *Central African Republic* – CEACR, direct request, 2010.



countries, including *Austria*,<sup>210</sup> *Botswana*,<sup>211</sup> *Burkina Faso*,<sup>212</sup> *Luxembourg*,<sup>213</sup> *Mauritania*,<sup>214</sup> *Nicaragua*,<sup>215</sup> *Romania*,<sup>216</sup> *Syrian Arab Republic*<sup>217</sup> and *Turkey*.<sup>218</sup>

104. With regard to certain other conditions of eligibility, *the Committee considers, in particular, to be incompatible with the Convention the requirements that candidates for trade union office should have reached the age of majority,<sup>219</sup> or be able to read and write,<sup>220</sup> and has noted with satisfaction the removal of the eligibility criterion of literacy in Guatemala.*<sup>221</sup>

#### Political views or activities

105. Legislation which prohibits the exercise of trade union functions solely on the grounds of political belief, affiliation or activities is not compatible with the right of organizations to elect their representatives in full freedom. Moreover, *the Committee is of the view that the practice of giving a broad interpretation to legislation which imposes restrictions so as to deprive certain persons of the right to be elected to trade union office solely on the grounds of their political beliefs or affiliation is not compatible with the Convention.*<sup>222</sup> The Committee has therefore noted with satisfaction the progress achieved in this field, including the recognition in *Peru*<sup>223</sup> of the possibility for trade union officers to engage in political activities to a certain extent.

#### Criminal record

106. *The Committee considers that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office.* However, in practice, several countries disqualify from trade union office all persons who have been convicted, regardless of the gravity or nature of the offence,<sup>224</sup> or those convicted of certain specific offences.<sup>225</sup> In

<sup>210</sup> *Austria* – CEACR, observation, 2008.

<sup>211</sup> *Botswana* – CEACR, observation, 2005.

<sup>212</sup> *Burkina Faso* – CEACR, observation, 2006.

<sup>213</sup> *Luxembourg* – CEACR, observation, 2005.

<sup>214</sup> *Mauritania* – CEACR, observation, 2005.

<sup>215</sup> *Nicaragua* – CEACR, observation, 2005.

<sup>216</sup> *Romania* – CEACR, direct request, 2005.

<sup>217</sup> *Syrian Arab Republic* – CEACR, observation, 2002.

<sup>218</sup> *Turkey* – CEACR, observation, 2010.

<sup>219</sup> See, for example, *Panama* – CEACR, observation, 2011; and *Paraguay* – CEACR, observation, 2010.

<sup>220</sup> See, for example, *Honduras* – CEACR, observation, 2010.

<sup>221</sup> *Guatemala* – CEACR, observation, 2002.

<sup>222</sup> General Survey, 1994, para. 119.

<sup>223</sup> *Peru* – CEACR, observation, 2005.

<sup>224</sup> See, for example, *Cambodia* – CEACR, direct request, 2011 (“persons convicted of any crime”); and *Djibouti* – CEACR, observation, 2011 (conviction “by a court”).

<sup>225</sup> See, for example, *Bangladesh* – CEACR, observation, 2010 (compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand); *Burundi* – CEACR, observation, 2011 (imprisonment without suspension of sentence for more than six months); *Pakistan* – CEACR, observation, 2010 (any offence under section 78 of the Industrial Relations Act); *Papua New Guinea* – CEACR, direct request, 2011 (any criminal offence justifying imprisonment); and *Turkmenistan* – CEACR, direct request, 2011 (for being sentenced for a crime, especially a serious crime).

other cases, certain types of conviction can result in the loss of civil and political rights which a candidate must possess in order to be eligible for trade union office.<sup>226</sup> In this context, the Committee has noted with satisfaction the removal of the requirement for the absence of a criminal record in *Botswana*<sup>227</sup> and *Guatemala*.<sup>228</sup>

*Re-election, removal and suspension of trade union officers*

107. ***In the view of the Committee, the exercise of trade union office is not incompatible with professional life and, consequently, any worker exercising trade union office, including high-level civil servants<sup>229</sup> should be able to remain in an employment relationship, if she or he so wishes.*** Accordingly, in the view of the Committee, any legislative provision, irrespective of its form, which restricts or prohibits re-election to trade union office is incompatible with the Convention,<sup>230</sup> by reason both of the principle of the autonomy of organizations and the problems that such provisions may raise for organizations which do not have a sufficient number of persons capable of carrying out the duties of a trade union officer. Moreover, any removal or suspension of trade union officers which is not the result of an internal decision of the trade union, a vote by the members or normal judicial proceedings, seriously interferes in the exercise of trade union office. Consequently, provisions which permit the appointment of temporary administrators by the administrative authorities are incompatible with the Convention, whatever the reasons invoked.<sup>231</sup> Provisions are also incompatible with the Convention under the terms of which, for example, the authorities “encourage” or “promote” alternation in the leadership of certain workers’ or employers’ organizations.<sup>232</sup>

**Organization of administration and activities  
and formulation of programmes**

*Financial management*

108. Legislative provisions which regulate in detail the internal functioning of workers’ and employers’ organizations pose a serious risk of interference which is incompatible with the Convention. Where such provisions are deemed necessary, they should simply establish an overall framework within which the greatest possible autonomy is left to the organizations for their functioning and administration. The Committee considers that restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body against any act of this nature by the authorities.<sup>233</sup>

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<sup>226</sup> General Survey, 1994, para. 120.

<sup>227</sup> *Botswana* – CEACR, observation, 2005.

<sup>228</sup> *Guatemala* – CEACR, observation, 2002.

<sup>229</sup> *Romania* – CEACR, direct request, 2011.

<sup>230</sup> See, for example, *Mexico* – CEACR, observation, 2011 (prohibition of re-election in trade unions).

<sup>231</sup> See, for example, *Egypt* – CEACR, observation, 2011 (provoking work stoppages); and *Turkey* – CEACR, observation, 2010 (participation of a representative in local or general elections).

<sup>232</sup> See, for example, *Ecuador* – CEACR, observation, 2010 (art. 326(8) of the Constitution).

<sup>233</sup> General Survey, 1994, para. 135.

109. As the autonomy and financial independence and the protection of the assets and property of organizations are essential elements of the right of organizations to organize their administration in full freedom, any legislative intervention in this respect merits the attention of the Committee. While it accepts legislative requirements that the constitutions of organizations should contain provisions relating to their internal financial administration or which provide for external supervision of financial reports, with a view to ensuring the conditions for honest and effective administration, it considers that other interventions are incompatible with the Convention. For example, the Committee considers that such supervision is compatible with the Convention when it is carried out in the following manner (in all cases, both the substance and the procedure of such verification should be subject to review by the judicial authority, affording every guarantee of impartiality and objectivity):<sup>234</sup>

- the supervision is limited to the obligation of submitting annual financial reports;
- verification is carried out because there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association);
- verification is limited to cases in which a significant number of workers (for example, 10 per cent) call for an investigation of allegations of embezzlement or lodge a complaint.

110. However, *it would be incompatible with the Convention if the law gave the authorities powers of control which go beyond these principles, or which tend to over-regulate matters that should be left to the trade unions themselves and their by-laws.*<sup>235</sup> This may take the form of extended control over the financial management of organizations,<sup>236</sup> or legislative provisions which regulate in detail certain aspects of the internal administration of organizations. Examples include provisions which:

- establish the minimum contribution of members;
- provide for financial supervision of the accounts by the public authorities;
- entrust the authorities with extensive powers to regulate the maximum rates of salaries and allowances paid to employees of the trade union;<sup>237</sup>
- specify the proportion of union funds that have to be paid to federations;
- require that certain financial operations, such as the receipt of funds from abroad, be approved by the public authorities;<sup>238</sup>
- restrict the freedom of trade unions to invest, manage and use their assets as they wish for normal and legitimate trade union purposes;<sup>239</sup>

<sup>234</sup> General Survey, 1994, paras 124–125.

<sup>235</sup> See, for example, *Libya* – CEACR, direct request, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011. These principles also apply to the supervision of employers' organizations: see, *Ukraine* – CEACR, observation, 2011.

<sup>236</sup> See, for example, *Chad* – CEACR, observation, 2010; *Chile* – CEACR, observation, 2010; and *Egypt* – CEACR, observation, 2011.

<sup>237</sup> See, for example, *Zimbabwe* – CEACR, observation, 2011.

<sup>238</sup> The Committee has noted an amendment to the Labour Code in the *Philippines* in this respect (draft text): *Philippines* – CEACR, observation, 2011.

<sup>239</sup> See, for example, *Kuwait* – CEACR, observation, 2011; and *Syrian Arab Republic* – CEACR, observation, 2011.

- empower the administrative authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time;<sup>240</sup> or
- intervene in the determination of the use of the assets of the trade union to pay fines or penalties imposed on the organization or on a trade union leader in the performance of her or his duties.

111. The Committee has noted with satisfaction the progress achieved recently in certain countries, including a decrease in the powers granted to the authorities to supervise trade union organizations in *Chile*;<sup>241</sup> the ending of the strict supervision of trade union activities by the Government in *Guatemala*;<sup>242</sup> the limitation of the power of the registrar to inspect trade union accounts in *Saint Lucia*;<sup>243</sup> the removal of restrictions on the receipt of funds from abroad in *Botswana*;<sup>244</sup> and the repeal or amendment of provisions in the *Syrian Arab Republic*<sup>245</sup> which prohibited trade unions from accepting gifts and donations without the prior agreement of the federation and the approval of the ministry, conferred on the ministry broad powers of financial supervision and required first-level unions to allocate a certain percentage of their resources to higher level trade unions.

*Internal administration and inviolability of union premises*

112. Interference by the public authorities in the internal administration of organizations may take several forms. The Committee considers contrary to the Convention legal provisions and practices which, for example, place organizations under the following obligations:

- to transmit to the authorities, at their request, copies of the decisions taken by the executive committees of the organizations or reports of their activities;
- to inform the authorities prior to the adoption of important decisions or to authorize a representative of the authorities to be present on such occasions;
- to assist the authorities in ascertaining whether the association is achieving its authorized purposes;<sup>246</sup> or
- to allow the authorities to determine the composition of the congress and the presiding officers of trade unions.<sup>247</sup>

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<sup>240</sup> See, for example, *Botswana* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2010; *Lesotho* – CEACR, direct request, 2011; *Nigeria* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; *Papua New Guinea* – CEACR, direct request, 2010; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Turkey* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011. In certain countries, failure to provide the authorities with the required information may be punishable with imprisonment: see, for example, *Gambia* – CEACR, direct request, 2010; and *Grenada* – CEACR, direct request, 2010.

<sup>241</sup> *Chile* – CEACR, observation, 2002.

<sup>242</sup> *Guatemala* – CEACR, observation, 2002.

<sup>243</sup> *Saint Lucia* – CEACR, observation, 2002.

<sup>244</sup> *Botswana* – CEACR, observation, 2005.

<sup>245</sup> *Syrian Arab Republic* – CEACR, observation, 2002.

<sup>246</sup> *Turkmenistan* – CEACR, direct request, 2011.

<sup>247</sup> See, for example, *Armenia* – CEACR, direct request, 2011 (detailed determination of the rights and responsibilities of the congress of an employers' organization); and *Syrian Arab Republic* – CEACR, observation, 2011 (determination of the composition of the congress and the presiding officers of the General Federation of Trade Unions).

113. Moreover, other matters should be left to the discretion of the members of the trade union, without any intervention by the public authorities, such as: the settlement of any internal dispute in a trade union;<sup>248</sup> issues relating to membership and members' dues; those relating to the decision to terminate the activities of an organization;<sup>249</sup> and those relating to the procedure for the submission of claims to the employer.<sup>250</sup> In this context, the Committee has welcomed, among other measures, the removal of the requirement in *Peru*<sup>251</sup> for trade unions to compile reports which may be requested by the labour authority.

114. Finally, the freedom to organize their administration also includes the right of organizations to be able to dispose of all their fixed and moveable assets unhindered, and that they should enjoy inviolability of their premises, correspondence and communications. When legislation makes provision for exceptions in this respect, for example in emergency situations, or in the interests of public order, *the Committee considers that searches should only be possible when a warrant has been issued for that purpose by the regular judicial authority*, when the latter is satisfied that there is good reason to presume that such a search will produce evidence for criminal proceedings under the ordinary law, and provided the search is restricted to the purpose for which the warrant was issued.<sup>252</sup>

#### *Activities and programmes*

115. Finally, *workers' and employers' organizations should have the right to organize their activities in full freedom and to formulate their programmes with a view to defending the occupational interests of their members, while respecting the law of the land. This includes in particular the right to hold trade union meetings, the right of trade union officers to have access to places of work and to communicate with management, the right to organize protest action, as well as certain political activities* (such as expressing support for a political party considered more able to defend the interests of members). The authorities should refrain from any interference which would restrict freedom of assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order.<sup>253</sup> For example, the Committee considers that provisions authorizing the authorities to convene the general assembly of an organization should be repealed,<sup>254</sup> as should those which require the presence of observers at meetings or demonstrations organized by trade unions.<sup>255</sup> In this context, it has welcomed in particular the amendment of the legislation in *Botswana*<sup>256</sup> which gave the registrar and the minister the right to convene general meetings; and the removal by a draft text in *Turkey*<sup>257</sup> of the provision

<sup>248</sup> See, for example, *Burundi* – CEACR, direct request, 2011.

<sup>249</sup> See, for example, *The former Yugoslav Republic of Macedonia* – CEACR, observation, 2011.

<sup>250</sup> See, for example, *Kazakhstan* – CEACR, observation, 2011.

<sup>251</sup> *Peru* – CEACR, observation, 2005.

<sup>252</sup> General Survey, 1994, para. 127.

<sup>253</sup> General Survey, 1994, para. 35.

<sup>254</sup> *Uganda* – CEACR, direct request, 2011.

<sup>255</sup> *Tajikistan* – CEACR, direct request, 2011.

<sup>256</sup> *Botswana* – CEACR, observation, 2005.

<sup>257</sup> *Turkey* – CEACR, observation, 2010.

establishing the possibility for the governor to appoint an observer to the general congress of a trade union.

116. With regard to the political activities of organizations, *the Committee is of the view that both legislative provisions which establish a close relationship between trade union organizations and political parties, and those which prohibit all political activities by trade unions, give rise to difficulties with regard to the principles of the Convention*. Noting that the existence of a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country,<sup>258</sup> the Committee considers that some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interests of organizations in expressing their point of view on matters of economic or social policy affecting their members or workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other.<sup>259</sup>

### *The right to strike*

#### Introduction

117. *Strikes are essential means available to workers and their organizations to protect their interests*, but there is a variety of opinions in relation to the right to strike. While it is true that strike action is a basic right, it is not an end in itself, but the last resort for workers' organizations, as its consequences are serious, not only for employers, but also for workers, their families and organizations and in some circumstances for third parties. In the absence of an express provision in Convention No. 87, it was mainly on the basis of *Article 3* of the Convention, which sets out the right of workers' organizations to organize their activities and to formulate their programmes, and *Article 10*, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed (as was the case for other provisions of the Convention) by the Committee on Freedom of Association as a specialized tripartite body (as of 1952), and by the Committee of Experts (as of 1959, and essentially taking into consideration the principles established by the Committee on Freedom of Association). This position of the supervisory bodies in favour of the recognition and protection of the right to strike has, however, been subject to a number of criticisms from the Employers' group in the Committee on the Application of Standards of the International Labour Conference.

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<sup>258</sup> Resolution concerning the independence of the trade union movement, 1952 (Preamble).

<sup>259</sup> General survey, 1994, paras 130–133.

### Employers' group

The Employers' group in the Conference Committee considers that neither the preparatory work for Convention No. 87, nor an interpretation based on the Vienna Convention on the Law of Treaties, offers a basis for developing, starting from the Convention, principles regulating in detail the right to strike.<sup>1</sup>

According to the Employer members, the right to strike has no legal basis in the freedom of association Conventions. In their view, Convention No. 87 at most contains a general right to strike, which nonetheless cannot be regulated in detail under the Convention. They consider that when the Committee of Experts expresses its views in detail on strike policies, especially on essential services, it applies a "one-size-fits-all" approach that fails to recognize differences in economic or industrial development and current economic circumstances. They add that the approach of the Committee of Experts undermines tripartism and ask it to reconsider its interpretation of the matter.<sup>2</sup> In 2011, the Employer members reiterated their position, considering that the observations of the Committee of Experts on the right to strike and essential services are not in conformity with the text, the preparatory work and the history of the negotiation of Convention No. 87.<sup>3</sup>

In its communication dated 7 July 2011, the International Organisation of Employers (IOE) recalls and develops in detail the long-held views of the Employers' group in relation to the right to strike as set out in the Conference Committee *Record of Proceedings*, particularly those related to the 81st Session of the International Labour Conference (1994) when the last General Survey on freedom of association and collective bargaining was discussed.

<sup>1</sup> *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 57. <sup>2</sup> *ibid.* <sup>3</sup> *Committee on the Application of Standards: Extracts from the Record of Proceedings*, General Report, 100th Session, Geneva, June 2011, Part I, General Report, para. 55. Moreover, during the discussion of the 1994 General Survey, the Employer members indicated that "strike was not mentioned either in Convention No. 87 or in Convention No. 98. Furthermore, the Survey placed a great deal of emphasis [...] on the historical aspects of these instruments; this historical method of interpretation however was only of secondary importance since, in the first place, must come the text, the purpose and the meaning of the provisions themselves. There were no concrete provisions and it was not helpful to quote the standards contained in the instruments of other organizations where strikes and collective action were sometimes mentioned in another context and in a very general or only indirect manner. [...] The beginning of the chapter rightly indicated that the right to strike was mentioned during the preparatory work, but adds in paragraph 142 that "[...] during discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted". The Employer members however quoted the following passage: "Several Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association". (31st Conference, 1948, Report VII, p. 87.) A similar conclusion was made in the plenary sitting: "The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organize, but rather a concise statement of certain fundamental principles". (31st Conference, 1948, *Record of Proceedings*, Appendix X, p. 477). Later, Recommendation No. 92 on voluntary conciliation and arbitration dealt with this issue in a neutral manner without regulating the contents. During the plenary sitting, the famous Worker spokesperson, Léon Jouhaux, bitterly complained of the unsatisfactory result of the discussion: he did not explicitly mention the absence of the right to strike, but other delegates did. Moreover, during the adoption of Convention No. 98, two requests presented by Workers' delegates with the aim of including a guarantee of the right to strike were rejected on the basis that it was not covered by the proposed text and that this question should be dealt with at a later stage. (32nd Conference, 1949, *Record of Proceedings*, Appendix VII, pp. 468 and 470; see also ILO: *Industry and Labour*, Vol. II, July–December 1949, pp. 147, and following.) Shortly afterwards, a Government delegate made the same request which the chairman declared unreceivable for the same reasons. [...] Under these circumstances, it was incomprehensible to the Employers that the supervisory bodies could take a stand on the exact scope and content of the right to strike in the absence of explicit and concrete provisions on the subject, and that this absence seemed precisely to be the justification for their position, as is suggested in paragraph 145. The Committee of Experts had put into practice here what was called in mathematics an axiom and in Catholic theology a dogma: that is complete, unconditional acceptance of a certain and exact truth from which everything else was derived" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, paras 117–119, pp. 25/32 and 33).

### Workers' group

The Worker members of the Conference Committee contest the position of the Employer members and consider that, although the right to strike is not explicitly mentioned in the Convention, that does not prevent its existence being recognized, particularly on the basis of several international instruments.<sup>1</sup>

In the discussion of the 1994 General Survey, they stated that the right to strike is an indispensable corollary of the right to organize protected by Convention No. 87 and by the principles enunciated in the ILO Constitution. In their view, without the right to strike, freedom of association would be deprived of its substance. They added that strike objectives could not be limited only to the conflicts linked to the workplace or the enterprise, particularly given the phenomena of enterprise fragmentation and internationalization. This was the logical consequence of the fact that trade union activities should not be limited to strictly occupational questions. This was the reason why sympathy strikes should be possible, as well as strikes at the sectoral level, the national and the international level. Finally, they considered that by considerably limiting the scope of action of trade unions, by legal or administrative restrictions, governments and employers might find themselves increasingly faced with spontaneous actions.<sup>2</sup>

According to the Worker members, possible restrictions on the right to strike in essential services and for certain categories of public servants should be restrictively defined given that they are exceptions to a general rule concerning a fundamental right. They added that the Committee of Experts unanimously, all the Worker members and a large majority of the Government members are of the opinion that effective protection of freedom of association necessarily implies operational rules and principles concerning the modalities of strike action. Finally, they indicated that the Committee of Experts had developed its views on this question in a very cautious, gradual and balanced manner, and that it would be preferable that the general consensus established in this regard was not shaken up.<sup>3</sup>

<sup>1</sup> *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 74. <sup>2</sup> *Record of Proceedings*, ILC, 81st Session, Geneva, 1994, 25, General Report, paras 136–143, pp. 25/38–40. <sup>3</sup> *ibid.*

118. With regard to the views put forward that the preparatory work would not support the inclusion of the right to strike, the Committee would first observe that the absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose. While the Committee considers that the preparatory work is an important supplementary interpretative source when reviewing the application of a particular Convention in a given country, it may yield to the other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years (see Articles 31 and 32 of the Vienna Convention on the Law of Treaties). In addition, and as seen below in response to comments made by both workers' and employers' organizations, the process of determining whether there is compliance with a general right to strike invariably involves consideration of the specific circumstances in which the Committee is called upon to determine the ambit and modalities of the right. The Committee has further borne in mind over the years the considerations set forth by the tripartite constituency and would recall in this respect that the right to strike was indeed first asserted as a basic principle of freedom of association by the tripartite Committee on Freedom of Association in 1952 and has been recognized and developed in scores of its decisions over more than a half century. Moreover, the 1959 General Survey, in which the Committee first raised its consideration in respect of the right to strike in relation to the Convention, was fully discussed by the Conference Committee on the Application of Standards without objection from any of the constituents.



119. The Committee reaffirms that the right to strike derives from the Convention. The Committee highlights that the right to strike is broadly referred to in the legislation of the great majority of countries and by a significant number of constitutions, as well as by several international and regional instruments, which justifies the Committee's interventions on the issue. Indeed, the principles developed by the supervisory bodies have the sole objective of ensuring that this right does not remain a theoretical instrument, but is duly recognized and respected in practice. For all of these reasons, and in light of the fact that the Committee of Experts has never considered the right to strike to be an absolute and unlimited right,<sup>260</sup> and that it has sought to establish limits to the right to strike in order to be able to determine any cases of abuse and the sanctions that may be imposed. The view taken concerning the right to strike and the principles developed over time on a tripartite basis, as in many other fields, should give rise to little controversy. The Committee further observes that employers' organizations also sometimes invoke the principles developed by the supervisory bodies concerning strikes and very tangible related matters, particularly with regard to the freedom to work of non-strikers, the non-payment of strike days, access of the management to enterprise installations in the event of a strike, the imposition of compulsory arbitration by unilateral decision of trade unions and protest action by employers against economic and social policy.

120. The affirmation of the right to strike by the supervisory bodies lies within the broader framework of the recognition of this right at the international level, particularly in the International Covenant on Economic, Social and Cultural Rights of the United Nations (Article 8, paragraph 1(d)),<sup>261</sup> which, to date, has been ratified by 160 countries, most of which are ILO members, as well as in a number of regional instruments, as indicated in paragraph 35 of the present Survey. It is in the context of the Council of Europe that the protection of the right to strike is the most fully developed at the regional level, in light of the abundant case law of the European Committee of Social Rights, the supervisory body for the application of the European Social Charter adopted in 1961 and revised in 1996, which sets out this right.

121. Other ILO instruments also refer to the right to strike, and principally the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes, and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which indicates that the parties should be encouraged to abstain from strikes and lockouts in the event of voluntary conciliation and arbitration, and that none of its provisions may be interpreted as limiting, in any way whatsoever, the right to strike. Certain resolutions also make reference to this right.<sup>262</sup>

122. Each year, the Committee examines many individual cases relating to national provisions regulating strikes, most frequently without being challenged by the governments concerned, which generally adopt measures to give effect to the comments of the Committee of Experts. Over the years, the supervisory bodies have specified a

<sup>260</sup> During the discussion of the 1994 General Survey, the Employer members felt it important to note "that they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, Part I, General Report, para. 121, p. 25/33).

<sup>261</sup> The Committee on Economic, Social and Cultural Rights recommends States parties to take the necessary measures with a view to ensuring the full exercise of the right to strike, or relaxing the limitations imposed on this right.

<sup>262</sup> See, in particular, the resolution adopted in 1970 by the ILC concerning trade union rights and their relation to civil liberties.

series of elements concerning the peaceful exercise of the right to strike, its objectives and the conditions for its legitimate exercise, which may be summarized as follows: (i) the right to strike is a right which must be enjoyed by workers' organizations (trade unions, federations and confederations); (ii) as an essential means of defending the interests of workers through their organizations, only limited categories of workers may be denied this right and only limited restrictions may be imposed by law on its exercise; (iii) the objectives of strikes must be to further and defend the economic and social interests of workers and; (iv) the legitimate exercise of the right to strike may not result in sanctions of any sort, which would be tantamount to acts of anti-union discrimination. Accordingly, subject to the restrictions authorized, a general prohibition of strikes is incompatible with the Convention, although the supervisory bodies accept the prohibition of wildcat strikes. Furthermore, strikes are often called by federations and confederations which, in the view of the Committee, should be recognized as having the right to strike. Consequently, legislation which denies them this right is incompatible with the Convention.<sup>263</sup>

### Recognition at the national level

123. Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted. In a very large number of countries, the right to strike is now explicitly recognized, including at the constitutional level.<sup>264</sup> The Committee has noted with satisfaction, for example, in relation to the African continent, the recent repeal of provisions prohibiting the right to strike in *Liberia*,<sup>265</sup> and the repeal of significant restrictions on the right to strike which remained in the *United Republic of Tanzania*.<sup>266</sup> It has also noted with satisfaction the definition of strikes set out in the new Labour Code of *Burkina Faso*,<sup>267</sup> under the terms of which a strike is understood as being a concerted and collective cessation of work with a view to supporting occupational demands and ensuring the defence of the material and moral interests of workers.

### Modalities

124. In the legislation of several countries, "political strikes" are explicitly or tacitly deemed unlawful.<sup>268</sup> The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore

<sup>263</sup> See, for example, *Colombia* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; and *Panama* – CEACR, observation, 2011.

<sup>264</sup> See, for example, *Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, The former Yugoslav Republic of Macedonia, Madagascar, Republic of the Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, United States, Uruguay and Bolivarian Republic of Venezuela*.

<sup>265</sup> *Liberia* – CEACR, observation, 2009.

<sup>266</sup> *United Republic of Tanzania* – CEACR, observation, 2005.

<sup>267</sup> *Burkina Faso* – CEACR, observation, 2010.

<sup>268</sup> See, for example, *Gabon* – CEACR, direct request, 2004; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members.<sup>269</sup> Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities,<sup>270</sup> including in cases when such organizations have recourse to strikes.

125. With regard to so-called "sympathy" strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful.<sup>271</sup> It has noted in particular the recognition in *Croatia*<sup>272</sup> of the right to call sympathy strikes in national legislation and the recognition of this right for public servants in the current collective agreement. It has also noted with interest the repeal from the Constitution of *Turkey*<sup>273</sup> of the provision which prohibited "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction".

126. Finally, *in the view of the Committee, any work stoppage, however brief and limited, may generally be considered as a strike, and restrictions in this respect can only be justified if the action ceases to be peaceful.*<sup>274</sup> "Go-slow strikes" and "work-to-rule" actions are also covered by the principles developed. However, certain countries continue to consider these forms of strike action as unfair labour practices, which can be punished by fines, removal from trade union office and other sanctions.<sup>275</sup>

#### Permitted restrictions and compensatory guarantees

127. The right to strike is not absolute and may be restricted in exceptional circumstances, or even prohibited. Over and above the armed forces and the police, the members of which may be excluded from the scope of the Convention in general, other restrictions on the right to strike may relate to: (i) certain categories of public servants; (ii) essential services in the strict sense of the term; and (iii) situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to

<sup>269</sup> The Committee on Freedom of Association has considered, in the particular case of a complaint presented by employers, that employers, like workers, should be able to have recourse to protest strikes (or action) against a government's economic and social policies (Case No. 2530 (*Uruguay*), Report No. 348, para. 1190).

<sup>270</sup> See, for example, *Swaziland* – CEACR, observation, 2011.

<sup>271</sup> In its report under art. 19 of the Constitution, the Government of New Zealand indicates that the reason for which it has not ratified Convention No. 87 is related to the fact that "ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty".

<sup>272</sup> *Croatia* – CEACR, observations, 1999 and 2004.

<sup>273</sup> *Turkey* – CEACR, observation, 2011.

<sup>274</sup> General Survey, 1994, para. 173.

<sup>275</sup> See, for example, *Pakistan* – CEACR, observation, 2010 (a work slowdown is considered an unfair labour practice).

meet the requirements of the situation. In these cases, compensatory guarantees should be provided for the workers who are thus deprived of the right to strike.

128. In this context, the Committee has noted with concern the potential impact of the recent case law of the Court of Justice of the European Communities (CJEC) concerning the exercise of the right to strike, and particularly the fact that in recent rulings the Court has found that the right to strike could be subject to restrictions where its effects may disproportionately impede an employer's freedom of establishment or freedom to provide services.<sup>276</sup> In a communication dated 29 August 2011, the European Trade Union Confederation (ETUC) drew the Committee's attention to its particular concerns with respect to the impact of recent decisions of the Court of Justice of the European Union (*Viking*, *Laval*, *Ruffert* and *Luxembourg*) on freedom of association rights and the effective recognition of collective bargaining. While the ETUC has asked the Committee to determine whether these decisions are compatible with Conventions Nos 87 and 98, the Committee recalls, as it had when examining similar matters with respect to the *United Kingdom*, that its mandate is limited to reviewing the application of Conventions in a given member State. The Committee nevertheless takes note with interest of recent initiatives of the European Commission to clarify the import of these judgments and looks forward to learning of the progress made in this regard.

### *Public service*

129. Taking into account the importance of ensuring the continuity of the functions of the three branches of the State (the legislative, executive and judicial authorities) and of essential services, ***the Committee of Experts and the Committee on Freedom of Association consider that States may restrict or prohibit the right to strike of public servants "exercising authority in the name of the State"***.<sup>277</sup> Decisions implementing this principle at the national level vary. For example, in *Switzerland*,<sup>278</sup> although previously all federal officials were denied the right to strike, an ordinance now limits this prohibition to officials exercising authority in the name of the State.

130. Several States prohibit or impose restrictions on the right to strike in the public service which go beyond the framework established by the Committee.<sup>279</sup> These restrictions relate in particular to teachers. Nevertheless, the Committee considers that public sector teachers are not included in the category of public servants "exercising authority in the name of the State" and that they should therefore benefit from the right to strike without being liable to sanctions, even though, under certain circumstances, the

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<sup>276</sup> *United Kingdom* – CEACR, observations, 2010 and 2011. CJEC, 11 December 2007, *International Transport Workers' Federation and Finnish Seaman's Union v. Viking Line ABP*, Case C-438/05, and CJEC, 19 December 2007, *Laval un Partneri v. Svenska Byggnadsarbetareförbundet*, Case C-341/05.

<sup>277</sup> See *Digest of decisions and principles of the Freedom of Association Committee*, 2006, para. 541, and General Survey, 1994, paras 158 et seq. For an example of the definition of the category of workers "exercising authority in the name of the State", see, *Denmark* – CEACR, direct request, 2010. See, for example, as regards the prohibition of the right to strike of customs officers, Committee on Freedom of Association, Case No. 2288 (*Niger*), Report No. 333.

<sup>278</sup> *Switzerland* – CEACR, direct request, 2011.

<sup>279</sup> See, for example, *Albania* – CEACR, observation, 2010; *Bulgaria* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2010; *Estonia* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2010 (in its report under art. 19 of the Constitution, the Government of *Japan* indicates that it is currently examining the issue of whether the right to strike should be granted in the public sector); *Kazakhstan* – CEACR, observation, 2011; *Lesotho* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2010.

maintenance of a minimum service may be envisaged in this sector.<sup>280</sup> This principle should also apply to postal workers and railway employees,<sup>281</sup> as well as to civilian personnel in military institutions when they are not engaged in the provision of essential services in the strict sense of the term.<sup>282</sup>

### *Essential services*

131. ***The second acceptable restriction on strikes concerns essential services.*** The Committee considers that essential services, for the purposes of restricting or prohibiting the right to strike, are only those “the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.<sup>283</sup> This concept is not absolute in its nature in so far as a non-essential service may become essential if the strike exceeds a certain duration or extent, or as a function of the special characteristics of a country (for example, an island State). In practice, national legislation fairly frequently has recourse to the concept of essential services to limit or prohibit the right to strike. This may range from a relatively short limitative enumeration to a long list which is included in the law itself. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. However, in certain countries, such as *Bulgaria*,<sup>284</sup> the right to strike can be exercised throughout the public service and in all services termed essential for the community.

132. In practice, the manner in which strikes are viewed at the national level varies widely: several States continue to define essential services too broadly,<sup>285</sup> or leave too much discretion to the authorities to unilaterally declare a service essential;<sup>286</sup> others allow strikes to be prohibited on the basis of their potential economic consequences<sup>287</sup> (particularly in EPZs and recently established enterprises),<sup>288</sup> or prohibit strikes on the basis of the potential detriment to public order or to the general or national interest.<sup>289</sup> Such provisions are not compatible with the principles relating to the right to strike.

133. In still other countries, such as *Colombia*,<sup>290</sup> it is left to the higher judicial authorities to determine, on a case-by-case basis, the essential nature of a service, even where there is a general definition in law in this respect. Finally, in other cases, the

<sup>280</sup> See, for example, *Germany* – CEACR, observation, 2010.

<sup>281</sup> *ibid.*

<sup>282</sup> See, for example, *Angola* – CEACR, direct request, 2010.

<sup>283</sup> General Survey, 1994, para. 159.

<sup>284</sup> *Bulgaria* – CEACR, observation, 2008 (removal of the prohibition of strikes in the energy, communications and health sectors).

<sup>285</sup> See, for example, *Chile* – CEACR, observation, 2010.

<sup>286</sup> See, for example, *Zimbabwe* – CEACR, observation, 2011.

<sup>287</sup> See, for example, *Australia* – CEACR, observation, 2010; *Benin* – CEACR, observation, 2001; and *Chile* – CEACR, observation, 2010.

<sup>288</sup> See, for example, *Bangladesh* – CEACR, observation, 2010 (prohibition of strikes for three years from the date of commencement of production in a new establishment); and *Panama* – CEACR, observation, 2011 (denial of the right to strike in enterprises less than two years old).

<sup>289</sup> See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2001; and *Zambia* – CEACR, observation, 2011.

<sup>290</sup> *Colombia* – CEACR, observation, 2010 (ruling on appeal for cassation of the Labour Chamber of the Supreme Court of Justice of 3 June 2009 (Case No. 40428)).

determination of essential services is the outcome of a joint decision by the parties through an agreement between the social partners, such as in *Cyprus*.<sup>291</sup> In this context, the Committee has noted with satisfaction several cases of interesting progress, including the repeal in *Guatemala*<sup>292</sup> of the prohibition of strikes or the suspension of work by workers in enterprises or services the interruption of which would, in the opinion of the Government, seriously affect the national economy; the removal in *Turkey*<sup>293</sup> of the imposition of compulsory arbitration to prevent a strike in EPZs and; the repeal in *Cyprus*<sup>294</sup> of provisions granting the Council of Ministers discretionary power to prohibit strikes in the services that it considers essential.

### *Activities not considered as essential services*

134. When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private sectors in numerous services, including the following: the banking sector,<sup>295</sup> railways,<sup>296</sup> transport services and public transport,<sup>297</sup> air transport services and civil aviation,<sup>298</sup> teachers and the public education service,<sup>299</sup> the agricultural sector,<sup>300</sup> fuel distribution services<sup>301</sup> and the hydrocarbon, natural gas and petrochemical sector,<sup>302</sup> coal production,<sup>303</sup> maintenance of ports and airports,<sup>304</sup> port services and authorities<sup>305</sup>

<sup>291</sup> *Cyprus* – CEACR, observation, 2006.

<sup>292</sup> *Guatemala* – CEACR, observation, 2002.

<sup>293</sup> *Turkey* – CEACR, observation, 2005.

<sup>294</sup> *Cyprus* – CEACR, observation, 2008.

<sup>295</sup> See, for example, *Botswana* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Mexico* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Sao Tome and Principe* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

<sup>296</sup> See, for example, *Azerbaijan* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Costa Rica* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

<sup>297</sup> See, for example, *Azerbaijan* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; *Guinea* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Jersey)* – CEACR, observation, 2011.

<sup>298</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2011.

<sup>299</sup> See, for example, *Canada* – CEACR, observation, 2010 (British Columbia and Manitoba); *Germany* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

<sup>300</sup> See, for example, *Chile* – CEACR, observation, 2010.

<sup>301</sup> See, for example, *Ecuador* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; and *Mozambique* – CEACR, observation, 2011.

<sup>302</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2010.

<sup>303</sup> See, for example, *Turkey* – CEACR, observation, 2010.

<sup>304</sup> See, for example, *Nigeria* – CEACR, observation, 2011.

and loading and unloading services for ships,<sup>306</sup> postal services,<sup>307</sup> municipal services,<sup>308</sup> services for the loading and unloading of animals<sup>309</sup> and of perishable foodstuffs,<sup>310</sup> EPZs,<sup>311</sup> government printing services,<sup>312</sup> road cleaning and refuse collection,<sup>313</sup> radio and television,<sup>314</sup> hotel services<sup>315</sup> and construction.<sup>316</sup>

### *Activities considered as essential services*

135. When examining concrete cases, the ILO supervisory bodies have considered that essential services in the strict sense of the term may include air traffic control services,<sup>317</sup> telephone services<sup>318</sup> and the services responsible for dealing with the consequences of natural disasters, as well as firefighting services, health and ambulance services, prison services, the security forces and water and electricity services. The Committee has also considered that other services (such as meteorological services and social security services) include certain components which are essential and others that are not.

### *Negotiated minimum service*

136. In situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, consideration might be given to ensuring that users' basic needs are met or that facilities operate safely or without interruption, the introduction of a negotiated minimum service, as a possible alternative to a total prohibition of strikes, could be appropriate. In the view of the Committee, the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (or essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an

<sup>305</sup> See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Dominica* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2010; *Guyana* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010.

<sup>306</sup> See, for example, *Costa Rica* – CEACR, observation, 2010; *Grenada* – CEACR, direct request, 2010; and *Guyana* – CEACR, observation, 2011.

<sup>307</sup> See, for example, *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; and *Russian Federation* – CEACR, observation, 2011.

<sup>308</sup> See, for example, *Russian Federation* – CEACR, observation, 2011.

<sup>309</sup> See, for example, *Mozambique* – CEACR, observation, 2011; and *Nigeria* – CEACR, observation, 2011.

<sup>310</sup> See, for example, *Dominica* – CEACR, observation, 2010; and *Mozambique* – CEACR, observation, 2011.

<sup>311</sup> See, for example, *Mozambique* – CEACR, observation, 2011.

<sup>312</sup> See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; and *Nigeria* – CEACR, observation, 2011.

<sup>313</sup> See, for example, *Nigeria* – CEACR, observation, 2011.

<sup>314</sup> See, for example, Committee on Freedom of Association, Case No. 1884 (*Swaziland*), Report No. 306.

<sup>315</sup> See, for example, Committee on Freedom of Association, Case No. 2120 (*Nepal*), Report No. 328.

<sup>316</sup> See, for example, Committee on Freedom of Association, Case No. 2326 (*Australia*), Report No. 338.

<sup>317</sup> See, for example, *Nigeria* – CEACR, observation, 2010.

<sup>318</sup> See, for example, *Kyrgyzstan* – CEACR, direct request, 2011.

acute crisis threatening the normal conditions of existence of the population; and (iii) in public services of fundamental importance.

137. However, such a service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities.<sup>319</sup> Moreover, a minimum service may always be required, whether or not it is in an essential service in the strict sense of the term, to ensure the security of facilities and the maintenance of equipment.

138. The Committee emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services.<sup>320</sup> Moreover, any disagreement on minimum services should be resolved, not by the government authorities, as is the case in certain countries,<sup>321</sup> but by a joint or independent body which has the confidence of the parties, responsible for examining rapidly and without formalities the difficulties raised and empowered to issue enforceable decisions. However, in practice, the legislation in certain countries continues to determine unilaterally and without consultation the level at which a minimum service is to be provided and to require that a specific percentage of the service is provided during the strike.<sup>322</sup> Others authorize the public authorities to determine minimum services at their discretion, without consultation,<sup>323</sup> or require the judicial authorities to issue an order for this purpose.<sup>324</sup>

139. In this context, the Committee has noted several interesting cases of progress, including the establishment and tripartite composition of the Guarantees Commission, which is entrusted with determining minimum services in *Argentina*;<sup>325</sup> the amendment of the Law on Strikes in *Montenegro*,<sup>326</sup> which now provides that, when determining the minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees; the introduction in *Guatemala*<sup>327</sup> of a minimum service in essential public services determined with the participation of the parties and the judicial authorities; and the decision in *Peru*<sup>328</sup> that in the case of disagreement on the number and occupation of the

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<sup>319</sup> General Survey, 1994, para. 161.

<sup>320</sup> See, for example, *Republic of Moldova* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

<sup>321</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; and *Cape Verde* – CEACR, direct request, 2011.

<sup>322</sup> See, for example, *Bulgaria* – CEACR, observation, 2011 (in the railways); and *Romania* – CEACR, observation, 2011 (in the field of transport).

<sup>323</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Chad* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

<sup>324</sup> See, for example, *Mauritius* – CEACR, direct request, 2011.

<sup>325</sup> *Argentina* – CEACR, observation, 2011. In contrast, in *Mexico*, the National Banking Commission responsible for ensuring that the indispensable number of agencies remain open during a strike is not a tripartite body.

<sup>326</sup> *Montenegro* – CEACR, direct request, 2011.

<sup>327</sup> *Guatemala* – CEACR, observation, 2002.

<sup>328</sup> *Peru* – CEACR, direct request, 2011.



workers who are to continue working, the labour authority shall designate an independent body for their determination.

*Situations of acute national or local crisis*

140. ***The third restriction on the right to strike relates to situations of acute national or local crisis.*** As general prohibitions of strikes resulting from emergency or exceptional powers constitute a major restriction on one of the essential means available to workers, the Committee considers that they are only justified in a situation of acute crisis, and then only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural, sanitary or humanitarian disaster, in which the normal conditions for the functioning of society are absent.<sup>329</sup>

*Compensatory guarantees for workers deprived of the right to strike*

141. When the right to strike is restricted or prohibited in certain enterprises or services considered essential, or for certain public servants exercising authority in the name of the State, the workers should be afforded adequate protection so as to compensate for the restrictions imposed on their freedom of action. Such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties, in which workers and their organizations could be associated.<sup>330</sup> Such arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

*Restrictions on strikes during the term of a collective agreement*

142. The legislation in certain countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law or by collective agreement must be observed. In other systems, collective agreements are seen as a social peace treaty of fixed duration during which strikes and lockouts are prohibited. The Committee considers that both these options are compatible with the Convention. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements. If legislation prohibits strikes during the term of collective agreements, this restriction must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements.<sup>331</sup>

143. ***EPZs.*** A number of countries establish a special system of industrial relations in EPZs which specifically or indirectly prohibits strikes in such zones.<sup>332</sup> In the view of the Committee, such prohibitions are incompatible with the principles of non-discrimination which must prevail in the implementation of the Convention. It has

<sup>329</sup> General Survey, 1994, para. 152.

<sup>330</sup> *Switzerland* – CEACR, direct request, 2011.

<sup>331</sup> General Survey, 1994, paras 166–167.

<sup>332</sup> See, for example, *Pakistan* – CEACR, observation, 2011 (information provided by the International Trade Union Confederation); and *Panama* – CEACR, observation, 2011.

therefore noted with satisfaction, among other measures, the repeal in *Turkey*<sup>333</sup> of the provision under which compulsory arbitration was imposed for a ten-year period in EPZs for the settlement of collective labour disputes; and the repeal in *Namibia*<sup>334</sup> of the provision which prohibited any employee from taking action by calling, or participating in a strike in an EPZ, under the threat of a disciplinary penalty or dismissal.

## Prerequisites

### *Exhaustion of prior procedures (conciliation, mediation and voluntary arbitration)*

144. A large number of countries require advance notice of strikes to be given to the administrative authorities or to the employer and/or establish an obligation to have recourse to prior conciliation and voluntary arbitration procedures in collective disputes before a strike may be called.<sup>335</sup> In the view of the Committee, such machinery should, however, have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.<sup>336</sup> With regard to the duration of prior conciliation and arbitration procedures, the Committee has considered, for example, that the imposition of a duration of over 60 working days as a prior condition for the exercise of a lawful strike may make the exercise of the right to strike difficult, or even impossible. In other cases, it has proposed reducing the period fixed for mediation.<sup>337</sup> The situation is also problematic when legislation does not set any time limit for the exhaustion of prior procedures and confers full discretion on the authorities to extend such procedures.<sup>338</sup>

### *Advance notice, cooling-off periods and the duration of strikes*

145. In a large number of countries, there is a requirement to comply with a notice period or a cooling-off period before calling a strike.<sup>339</sup> In so far as they are conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, such provisions may be seen as measures taken to encourage and promote the development of voluntary bargaining. Again, however, the period of advance notice should not be an additional obstacle to bargaining, and should be shorter if it follows a compulsory prior mediation or conciliation procedure which itself is already lengthy. For example, the Committee has considered that advance notice of 60 days is excessive.<sup>340</sup>

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<sup>333</sup> *Turkey* – CEACR, observation, 2005.

<sup>334</sup> *Namibia* – CEACR, observation, 2003.

<sup>335</sup> See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Libya* – CEACR, observation, 2011; and *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2010.

<sup>336</sup> General Survey, 1994, para. 171.

<sup>337</sup> *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011.

<sup>338</sup> See, for example, *Kiribati* – CEACR, observation, 2011.

<sup>339</sup> See, for example, *Burundi* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

<sup>340</sup> *United Republic of Tanzania* – CEACR, observation, 2011.

146. Finally, in certain cases, the advance notice must be accompanied by an indication of the duration of the strike, under the threat that workers may be liable to sanctions if they participate in a strike the duration of which is not specified in the notification.<sup>341</sup> The Committee considers that workers and their organizations should be able to call a strike for an indefinite period if they so wish.<sup>342</sup>

#### *Quorum and majority required to call a strike*

147. Certain countries provide that, to be able to call a strike, it must be so decided by two-thirds<sup>343</sup> or three-quarters<sup>344</sup> of workers. In general, the Committee considers that requiring a decision by over half of the workers involved in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises.<sup>345</sup> In the Committee's view, if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.<sup>346</sup> For example, the observance of a quorum of two-thirds of those present may be difficult to reach and could restrict the right to strike in practice.<sup>347</sup> In this context, it has noted with satisfaction, among other measures, the legislative amendment in *Latvia*<sup>348</sup> which reduced the quorum required to declare a strike from three-quarters to one half of the members of a trade union or a company participating in the respective meeting. Similarly, in *Guatemala*,<sup>349</sup> the requirement to obtain the votes of two-thirds of the members of a trade union to decide whether or not to call a strike has been removed and it is now sufficient to obtain a vote in favour of half plus one of the members constituting the quorum of the respective assembly.

#### *Prior approval and supervision of strike ballots*

148. The Committee considers that the requirement set out in law to obtain prior approval of a strike by a higher level trade union organization<sup>350</sup> is an impediment to the freedom of choice of the organizations concerned to organize their activities. Furthermore, it considers that the control or supervision of the strike ballot by the

<sup>341</sup> See, for example, *Burundi* – CEACR, direct request, 2011; *Bulgaria* – CEACR, observation, 2011; *Egypt* – CEACR, direct request, 2011; *Georgia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

<sup>342</sup> See, for example, *Chad* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

<sup>343</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; and *Mexico* – CEACR, observation, 2011.

<sup>344</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; and *Plurinational State of Bolivia* – CEACR, observation, 2010.

<sup>345</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Mauritius* – CEACR, direct request, 2011.

<sup>346</sup> General Survey, 1994, para. 170.

<sup>347</sup> See, for example, *Czech Republic* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

<sup>348</sup> *Latvia* – CEACR, observation, 2007.

<sup>349</sup> *Guatemala* – CEACR, observation, 2002.

<sup>350</sup> Such approval is required, for example, in *Egypt* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

administrative authority<sup>351</sup> constitutes an act of interference in trade union activities that is incompatible with the Convention, unless the trade unions so request, in accordance with their own rules.

## The course of the strike

### *Picketing, occupation of the workplace, access to the enterprise and freedom of work*

149. Strike action is often accompanied by the presence, at the entry to the workplace, of strike pickets aimed at ensuring the success of the strike by persuading the workers concerned to stay away from work. In the view of the Committee, in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. Restrictions on strike pickets and workplace occupations can only be accepted where the action ceases to be peaceful. It is however necessary in all cases to guarantee respect for the freedom to work of non-striking workers and the right of the management to enter the premises. In practice, while certain countries establish very general rules which are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets<sup>352</sup> or the occupation of the workplace during a strike.<sup>353</sup> ***The Committee considers that, in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances.***

150. Several complaints have been presented by employers' organizations to the Committee on Freedom of Association concerning issues relating to the right to strike. The principal subjects have consisted of the management being prevented from having access to the premises of the enterprise during the strike, the conditions relating to the payment of wages to striking workers, the freedom of work of non-striking workers and the modalities governing compulsory arbitration by unilateral decision of trade union organizations. The Committee has considered that the requirement by law of the closing down of the enterprise, establishment or business in the event of a strike could be an infringement of the freedom of work of non-strikers and could disregard the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of directors and managerial staff to enter the installations of the enterprise and to exercise their activities), and accordingly raises problems of compatibility with the Convention. It has also considered that a stable labour relations system should take account of the rights and obligations of both workers' organizations and of employers and their organizations.<sup>354</sup> In this context, the Committee has noted with satisfaction, for example, the amendment of the legislation in *Panama*,<sup>355</sup> which now provides that the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their

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<sup>351</sup> Such supervision is carried out, for example, in *Angola* – CEACR, direct request, 2010; *Bahamas* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 1997; *Swaziland* – CEACR, observation, 2010; and *United Republic of Tanzania* – CEACR, observation, 2011.

<sup>352</sup> See, for example, *United Republic of Tanzania* – CEACR, observation, 2011.

<sup>353</sup> See, for example, *Burkina Faso* – CEACR, observation, 2010 (prohibition under the penalty of penal sanctions); *Côte d'Ivoire* – CEACR, direct request, 2010; *Mauritania* – CEACR, direct request, 2011 (prohibition under penalty of penal sanctions); and *Senegal* – CEACR, observation, 2011.

<sup>354</sup> Committee on Freedom of Association, Case No. 1931 (*Panama*), Report No. 310, paras 497 and 502.

<sup>355</sup> *Panama* – CEACR, observation, 2011.

purpose is not to recommence productive activities (the access of non-striking workers to the enterprise is not, however, mentioned).

*Requisitioning of strikers and hiring of external workers*

151. Although certain systems continue to retain fairly broad powers to requisition workers in the case of a strike,<sup>356</sup> the Committee considers that it is desirable to limit powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, namely: (i) in the public service for public servants exercising authority in the name of the State; (ii) in essential services in the strict sense of the term; and (iii) in the case of an acute national or local crisis.

152. The Committee also recalls that the maintaining of the employment relationship is a normal legal consequence of recognition of the right to strike. However, in some countries with the common law system strikes are regarded as having the effect of terminating the employment contract, leaving employers free to replace strikers with new recruits.<sup>357</sup> ***The Committee considers that provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike, particularly where striking workers are not able in law to return to their employment at the end of the dispute.*** The legislation should provide for genuine protection in this respect.<sup>358</sup>

Compulsory arbitration

153. Another means of denying the right to strike or seriously restricting its exercise consists of the imposition of compulsory arbitration, which makes it possible to prohibit virtually all strikes or to end them quickly. In such cases, collective labour disputes are resolved by a final judicial award or an administrative decision that is binding on the parties concerned, with strike action being prohibited during the procedure and once the award has been issued. The Committee considers that recourse to compulsory arbitration to bring an end to a collective labour dispute and a strike is only acceptable under certain circumstances, namely: (i) when the two parties to the dispute so agree; or (ii) when the strike in question may be restricted, or even prohibited, that is: (a) in the case of disputes concerning public servants exercising authority in the name of the State; (b) in conflicts in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation.<sup>359</sup> Accordingly, the existence of protracted disputes and the failure of conciliation are not per se elements which justify the imposition of compulsory arbitration.<sup>360</sup> However, the Committee also recognizes that there comes a time in bargaining where, after protracted and fruitless negotiations, the public authorities might be justified to step in when it is obvious that the deadlock will not be broken without some initiative on their part.<sup>361</sup>

<sup>356</sup> See, for example, *Angola* – CEACR, direct request, 2010; *Burkina Faso* – CEACR, observation, 2011; and *Djibouti* – CEACR, observation, 2010.

<sup>357</sup> *United Kingdom* – CEACR, observation, 2011.

<sup>358</sup> General Survey, 1994, para. 139.

<sup>359</sup> General Survey, 1994, para. 257.

<sup>360</sup> *Kiribati* – CEACR, observation, 2011.

<sup>361</sup> General Survey, 1994, para. 258.

154. In practice, several countries continue to authorize recourse to compulsory arbitration, either automatically, or at the discretion of the public authorities,<sup>362</sup> or at the request of one of the parties (sometimes following the exhaustion of compulsory prior conciliation and mediation procedures).<sup>363</sup> ***In the view of the Committee, systematic recourse to this type of procedure is tantamount in practice to a general prohibition of strikes, which is incompatible with the Convention.*** Moreover, arbitration imposed by the authorities at the request of only one of the parties is, in general, contrary to the principles of collective bargaining. Nevertheless, many countries continue to authorize recourse to compulsory arbitration in situations which go beyond the framework established by the Committee,<sup>364</sup> particularly in cases in which disputes continue for more than a certain period.<sup>365</sup>

155. Other countries provide that when the conciliation attempt between the parties to the dispute has not been successful, the dispute may be referred to a specific body responsible for drawing up a report or recommendations which, after a certain period has elapsed, may become enforceable if the parties to the dispute have not challenged them.<sup>366</sup> The Committee considers that this type of provision may be compatible with the Convention, on condition that the period referred to above is sufficiently long to allow the parties the necessary time for reflection.

156. The issue of arbitration is also broadly developed in Chapter 2 below on Convention No. 98.

## Sanctions

157. The principles developed by the supervisory bodies in relation to the right to strike are only valid for lawful strikes, conducted in accordance with the provisions of national law, on condition that the latter are themselves in conformity with the principles of freedom of association. They do not cover the abusive or unlawful exercise of the right to strike, which may take various forms and may give rise to certain sanctions. If the strike is determined by a competent judicial authority to be unlawful on the basis of provisions that are in conformity with freedom of association principles, proportionate

<sup>362</sup> See, for example, *Botswana* – CEACR, observation, 2011; *Dominica* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *Kuwait* – CEACR, observation, 2011; *Mali* – CEACR, observation, 2011; *Mauritius* – CEACR, direct request, 2011; *Panama* – CEACR, observation, 2010; *Sri Lanka* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Anguilla)* – CEACR, direct request, 2011.

<sup>363</sup> See, for example, *Canada* – CEACR, observation, 2010 (when the work stoppage exceeds 60 days); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (from the end of the period of strike notice); *Côte d'Ivoire* – CEACR, direct request, 2010; *Egypt* – CEACR, observation, 2004; *Fiji* – CEACR, observation, 2010; *Georgia* – CEACR, observation, 2010 (after 14 days); *Haiti* – CEACR, observation, 2010; *Malta* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Panama* – CEACR, observation, 2011; *Romania* – CEACR, observation, 2011; and *Uganda* – CEACR, observation, 2010.

<sup>364</sup> See, for example, *Burundi* – CEACR, direct request, 2011 (the possibility of recourse to the Administrative Court in the context of disputes appears to have resulted in a system of compulsory arbitration); *Egypt* – CEACR, observation, 2011 (sections 179, 187, 193 and 194 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (art. 326(12) of the Constitution); *Ghana* – CEACR, direct request, 2010 (section 160(2) of the Labour Act); *Mauritania* – CEACR, observation, 2011 (sections 350 and 362 of the Labour Code); *Mozambique* – CEACR, observation, 2011 (section 189 of the Labour Act); *Panama* – CEACR, observation, 2011 (sections 452 and 486 of the Labour Code); *Sao Tome and Principe* – CEACR, observation, 2010 (section 11 of Act No. 4/92); *Togo* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010 (sections 29, 30 and 32 of Act No. 2822); and *Uganda* – CEACR, direct request, 2011 (sections 5(1) and (3) of the Labour Disputes Act).

<sup>365</sup> See, for example, *Nicaragua* – CEACR, observation, 2011 (after 30 days of strike); and *Romania* – CEACR, observation, 2011 (after 20 days).

<sup>366</sup> See, for example, sections 242–248 of the Labour Code of *Congo*.

disciplinary sanctions may be imposed against strikers (such as reprimands, withdrawal of bonuses, etc).<sup>367</sup> The question of determining whether or not a strike is lawful is therefore essential. In the view of the Committee, responsibility for declaring a strike illegal should not lie with the government authorities, but with an independent body which has the confidence of the parties involved.<sup>368</sup> In this context, the Committee has noted with satisfaction, for example, that in *Colombia*<sup>369</sup> the legality or unlawful nature of a collective labour suspension or stoppage shall be the subject of a judicial ruling in a priority procedure. It should be noted that the non-payment of wages corresponding to the period of strike is a mere consequence of the absence of work, and not a sanction. Therefore, salary deductions for days of strike do not raise problems of compatibility with the Convention. Ultimately, the payment of wages to striking workers is a matter appropriate to negotiation between the parties concerned.

### *Penal sanctions*

158. Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions.<sup>370</sup> However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property). The concern expressed by the Committee to ensure that sentences of imprisonment are on no account imposed on strikers is also supported by the supervisory bodies of the United Nations, and particularly the Committee on Economic, Social and Cultural Rights, which has considered that the imposition of such sanctions constitutes non-compliance with the obligations of the State party to the Covenant.<sup>371</sup> Despite these principles, several States continue to maintain specific penal sanctions for strike action,<sup>372</sup> including imprisonment,<sup>373</sup> in violation of the principles established by the Committee.

<sup>367</sup> *Kiribati* – CEACR, observation, 2011; *Madagascar* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Syrian Arab Republic* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011.

<sup>368</sup> Certain systems are not in conformity with the Convention on this point: see, for example, *Fiji* – CEACR, observation, 2010; *Peru* – CEACR, direct request, 2011 (this responsibility lies with the labour administrative authority); and *Uganda* – CEACR, direct request, 2011 (the responsibility for declaring a strike illegal lies with the Government).

<sup>369</sup> *Colombia* – CEACR, observation, 2009.

<sup>370</sup> It should be noted that Art. 1 of the Abolition of Forced Labour Convention, 1957 (No. 105), prohibits forced or compulsory labour as a punishment for having participated in strikes.

<sup>371</sup> Committee on Economic, Social and Cultural Rights of the United Nations, *Concluding observations: Syrian Arab Republic*, 24 September 2001 (E/C.12/1/Add.63), para. 21. In particular, the Committee on Economic, Social and Cultural Rights expressed “concern about the restrictions in practice reported by the ILO with regard to the right to strike, such as the imposition of sanctions, including imprisonment, which constitutes non-compliance with the State party’s obligation regarding article 8 of the Covenant”.

<sup>372</sup> See, for example, *Barbados* – CEACR, observation, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burkina Faso* – CEACR, observation, 2010; *Chile* – CEACR, observation, 2010; *Congo* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Guatemala* – CEACR, observation, 2010; *Guyana* – CEACR, observation, 2011; *Kiribati* – CEACR, observation, 2011;

159. Other types of sanctions are sometimes imposed, such as fines, the closure of trade union premises, the suspension or deregistration of the trade union concerned,<sup>374</sup> or the removal from office of trade union officers.<sup>375</sup> The Committee considers that such sanctions should be possible only where the prohibition of strike action is in conformity with the Convention and the sanctions are proportionate to the seriousness of the fault committed. In any case, a right of appeal should exist against sanctions imposed by the authorities. Finally, certain systems are characterized by specific features and convict strikers on the basis of more general provisions of penal legislation, such as the offence of “obstruction of business”;<sup>376</sup> or provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the settlement of an industrial dispute;<sup>377</sup> or provide for penal sanctions in the case of a work slowdown.<sup>378</sup> In the view of the Committee, such sanctions are not compatible with the Convention. In this context, it has noted with satisfaction, among other measures, the removal of penal sanctions for strike action in the *Republic of Moldova*,<sup>379</sup> *Guatemala*<sup>380</sup> and the *Syrian Arab Republic*.<sup>381</sup>

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*Republic of Moldova* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Ukraine* – CEACR, observation, 2011.

<sup>373</sup> See, for example, *Angola* – CEACR, direct request, 2010 (section 27 of Act No. 23/91 on strikes); *Azerbaijan* – CEACR, observation, 2010 (section 233 of the Penal Code); *Bahamas* – CEACR, observation, 2010 (sections 74(3), 75(3), 76(2)(b) and 77(2) of the Industrial Relations Act); *Bangladesh* – CEACR, observation, 2010 (sections 196(2)(e) and 291, 294 to 296 of the Labour Act); *Barbados* – CEACR, observation, 2011 (section 4 of the Better Security Act, 1920); *Benin* – CEACR, observation, 2010 (with regard to seafarers: Ordinance No. 38 PR/MTPTPT of 18 June 1968); *Chile* – CEACR, observation, 2010 (section 11 of Act No. 12927 on the internal security of the State); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (section 326 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (Decree No. 105 of 7 June 1967); *Fiji* – CEACR, observation, 2010 (sections 256(a) and 250 of the Employment Relations Act); *Guyana* – CEACR, observation, 2011 (section 19 of the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Bill, 2006); *Libya* – CEACR, direct request, 2011 (section 176 of the Labour Code); *Madagascar* – CEACR, observation, 2011 (section 258 of the Labour Code); *Netherlands (Aruba)* – CEACR, observation, 2011 (section 374(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964); *Nigeria* – CEACR, observation, 2011 (section 30 of the Trade Union Act, as amended by section 6(d) of the Trade Union (Amendment) Act); *Pakistan* – CEACR, observations, 2011 (Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act) and 2010 (Essential Services Act); *Philippines* – CEACR, observation, 2011 (sections 264(a) and 272(a) of the Labour Code); *Syrian Arab Republic* – CEACR, observation, 2011 (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949 issuing the Penal Code); *Serbia* – CEACR, direct request, 2011 (section 167 of the Penal Code); *Seychelles* – CEACR, observation, 2011 (section 56(1) of the Industrial Relations Act); *Tajikistan* – CEACR, direct request, 2011 (section 160 of the Criminal Code); *Trinidad and Tobago* – CEACR, observation, 2011 (for teachers and employees of the Central Bank); *Tunisia* – CEACR, observation, 2011 (section 388 of the Labour Code); *Turkey* – CEACR, observation, 2010 (sections 70, 71, 72, 73 (except for subsection 3, repealed by the Constitutional Court), 77 and 79 of Act No. 2822); *Ukraine* – CEACR, observation, 2011 (section 293 of the Penal Code); *Uganda* – CEACR, direct request, 2011 (section 29(3) of the Labour Disputes (Arbitration and Settlement) Act); *Zambia* – CEACR, observation, 2011 (section 107 of the Industrial and Labour Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (sections 109 and 112 of the Labour Act).

<sup>374</sup> See, for example, *Pakistan* – CEACR, observation, 2010 (section 64(7) of the Industrial Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (section 107 of the Labour Act).

<sup>375</sup> *Pakistan* – CEACR, observation, 2010.

<sup>376</sup> Committee on Freedom of Association, Case No. 2602 (Republic of Korea), Report No. 359, paras 342–370.

<sup>377</sup> See, for example, *Bangladesh* – CEACR, observation, 2010 (section 301 of the Labour Act).

<sup>378</sup> See, for example, *Pakistan* – CEACR, observation, 2010.

<sup>379</sup> *Republic of Moldova* – CEACR, observation, 2011.

<sup>380</sup> *Guatemala* – CEACR, observation, 2002.

<sup>381</sup> *Syrian Arab Republic* – CEACR, observation, 2002.



160. It has also noted with satisfaction the adoption of provisions in *Colombia*<sup>382</sup> providing that any person who prevents a lawful assembly or engages in reprisals on grounds of strike action, assembly or legitimate association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law.

*Dismissal for strike action and reinstatement of strikers*

161. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its lawful exercise should not result in striking workers being dismissed or discriminated against.<sup>383</sup> In the view of the Committee, dismissal for strike action in the case of a lawful strike constitutes serious discrimination based on the exercise of lawful trade union activities, in violation of Convention No. 98. It considers that, if the right to strike is to be effectively guaranteed, workers who participate in a lawful strike should be able to return to work once the strike has ended and the fact of making their return to work subject to certain time limits or the consent of the employer is an obstacle to the effective exercise of this right.<sup>384</sup>

## Dissolution and suspension of organizations by administrative authority

162. *The dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should therefore be accompanied by all the necessary guarantees. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution.* However, certain countries continue to allow the dissolution of workers' and employers' organizations by administrative authority, which is a serious and direct violation of the Convention.<sup>385</sup> With regard to the distribution of trade union assets in the event of dissolution, these should be used for the purposes for which they were acquired. The authorities and all of the organizations concerned should cooperate so that all trade unions are able to carry out their activities in full independence and on an equal footing.<sup>386</sup>

## Right of organizations to establish federations and confederations and to affiliate with international organizations

163. *In order to defend the interests of their members more effectively, workers' and employers' organizations should have the right to form federations and confederations of their own choosing,* which should themselves enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes. International solidarity of workers and employers also requires that their national federations and confederations be able to group together and act freely at the international level.<sup>387</sup>

<sup>382</sup> *Colombia* – CEACR, observation, 2010.

<sup>383</sup> General Survey, 1994, para. 179.

<sup>384</sup> See Chapter 2 below on Convention No. 98.

<sup>385</sup> See, for example, *Nigeria* – CEACR, observation, 2011.

<sup>386</sup> General Survey, 1994, paras 180 et seq.

<sup>387</sup> General Survey, 1994, paras 189 et seq.

## Chapter 2

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

#### Introduction

164. The right to organize and to bargain collectively is interwoven with the other fundamental rights highlighted in this General Survey. It is the complement to freedom of association. It enables constructive leverage to be exerted against forced labour. It is a catalytic process to help protect children and other vulnerable groups. It is a key instrument to uphold non-discrimination and equality, integrating the world of work with the guarantee of fundamental rights at work for all.

165. One of the ILO's principal missions is to promote collective bargaining the world over. This mission was set out in 1944 in the Declaration of Philadelphia, which forms part of the ILO Constitution and recognizes the solemn obligation of the International Labour Organization "to further among the nations of the world programmes which will achieve [...] the effective recognition of the right of collective bargaining". This principle was enshrined in Convention (No. 98), adopted five years later, which has since achieved almost universal endorsement in terms of ratification, bearing witness to the force of its principles in the majority of countries. In June 1998, the ILO took a further step with the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Declaration indicates that "all Members, even if they have not ratified the [fundamental] Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights". These principles include the effective recognition of the right to collective bargaining.

166. Convention No. 98, adopted in 1949 to supplement certain aspects of Convention No. 87, has three main objectives: (i) protection against acts of anti-union discrimination both at the time of taking up employment and in the course of employment, including the termination of the employment relationship; (ii) protection against acts of interference in the internal affairs of workers' and employers' organizations; and (iii) the promotion of collective bargaining. Convention No. 98 has since been supplemented by the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

167. The protection afforded to workers and trade union leaders against acts of anti-union discrimination and acts of interference is an essential aspect of freedom of association, as such acts may result in practice in a denial of freedom of association and of the guarantees laid down in Convention No. 87, and also consequently of collective bargaining. Collective bargaining is one of the principal and most useful institutions developed since the end of the nineteenth century. As a powerful instrument of dialogue

between workers' and employers' organizations, collective bargaining contributes to the establishment of just and equitable working conditions and other benefits, thereby contributing to social peace. It also provides a basis for preventing labour disputes and determining procedures for the settlement of certain specific problems, particularly in the context of adjustment processes in the event of economic crisis or cases of force majeure, as well as worker mobility programmes. Collective bargaining is therefore an effective instrument which facilitates adaptation to economic, socio-political and technological change. The principal elements of Convention No. 98, with which most national law and practice is now aligned, are the following: (i) the principle of the independence and autonomy of the parties and of free and voluntary bargaining; (ii) the effort made, in the context of the various bargaining systems, to reduce to a minimum any possible interference by the public authorities in bipartite negotiations; and (iii) the primacy accorded to employers and their organizations and to trade unions as the parties to negotiations.

## Scope of the Convention and methods of application

### General principle and authorized exceptions

168. *Convention No. 98 covers all workers and employers, and their respective organizations, in both the private and the public sectors, regardless of whether the service is essential. The only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State* (see below). Accordingly, for example, the Committee has recalled that the right to organize and to collective bargaining applies to the following categories of workers: prison staff, fire service personnel, seafarers, rural and agricultural workers, workers in export processing zones (EPZs), subcontracted workers, migrant workers, domestic workers and apprentices (see below, paragraph 209). Moreover, the rights and safeguards set out in the Convention apply to all workers irrespective of the type of employment contract, regardless of whether or not their employment relationship is based on a written contract,<sup>388</sup> or on a contract for an indefinite term.<sup>389</sup>

### Methods of application

169. In the same way as Convention No. 87, there are no detailed provisions in Convention No. 98 respecting its methods of application. Only *Article 3* provides that “machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in [*Articles 1 and 2*, which relate to acts of discrimination and interference]”. Various methods of application can therefore be envisaged and, while certain States give preference to legislative measures, others are content with satisfactory application in practice, or through case law. Most of the provisions relating to the right to organize and to collective bargaining are contained in labour legislation and in instruments regulating industrial relations at the national level. However, while the fundamental principles underlying these Conventions are set out in many constitutions, other means of application are determined directly by collective agreements concluded between employers' and workers' organizations at the

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<sup>388</sup> *Gambia* – CEACR, observation, 2010.

<sup>389</sup> *Belarus* – CEACR, observation, 2011.

different levels. In general, the Committee encourages the use of methods of application for Conventions Nos 87 and 98 which have their origins in tripartism, social dialogue and full and frank consultations between the social partners.<sup>390</sup> This is particularly important in relation to legislation setting out the rights protected by these instruments with a view to ensuring that the parties concerned are committed to the principles and, accordingly, that the measures adopted are sustainable over time. For example, the Committee has noted with interest the preparation in close consultation with the social partners of the Fair Work Act, 2009, in *Australia*.<sup>391</sup>

## Difficulties concerning the scope of application

170. *Armed forces and the police.* In provisions similar to those contained in Convention No. 87, Convention No. 98 leaves it to national laws or regulations to determine whether its provisions apply to the armed forces and the police (*Article 5(1)*). However, the Committee wishes to recall that civilian personnel in the armed forces enjoy the rights and guarantees set out in the Convention and that, even though certain employees in the private or the public sector may carry a weapon in the course of their duties, but are not members of the police or the armed forces, they cannot automatically be excluded from the scope of the Convention.<sup>392</sup>

171. *Public sector.* In contrast with Convention No. 87, Convention No. 98 excludes from its scope certain categories of public servants.<sup>393</sup> However, this restriction leaves intact the rights guaranteed to public servants by Convention No. 87. Under the terms of *Article 6*, Convention No. 98 does not deal with the position of public servants, nor shall it be construed as prejudicing their rights or status in any way. Nevertheless, observing the diversity of interpretations of the concept of “public servant” at the national level, the Committee decided to adopt a restrictive approach, basing itself in particular on the English text of this provision, which uses the terms “public servants engaged in the administration of the State” (in French, *fonctionnaires publics*, and in Spanish *los funcionarios públicos empleados en la administración del Estado*). Accordingly, the Committee considers that only public servants engaged in the administration of the State may be excluded from the scope of the Convention and that the determination of this category of workers is to be made on a case-by-case basis, in light of criteria relating to the prerogatives of the public authorities (and particularly the authority to impose and enforce rules and obligations, and to penalize non-compliance). Consequently, the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State, instead of real collective bargaining procedures, is not sufficient.

172. In other words, a distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. This second category of public employees

<sup>390</sup> See, for example, *Cambodia* – CEACR, observation, 2011; and *Republic of Moldova* – CEACR, observation, 2011.

<sup>391</sup> *Australia* – CEACR, observation, 2010.

<sup>392</sup> *Morocco* – CEACR, direct request, 2011.

<sup>393</sup> General Survey, 1994, paras 199 et seq.

includes, for instance, employees in public enterprises, municipal employees and those in decentralized entities,<sup>394</sup> public sector teachers,<sup>395</sup> as well as air transport personnel, whether or not they are considered in national law as belonging to the category of public servants.<sup>396</sup> Other examples can be found in paragraphs 894 et seq. of the *Digest of decisions and principles of the Freedom of Association Committee*, (fifth (revised) edition), 2006. The Committee could not accept large categories of workers employed by the State being excluded from the benefits of the Convention merely on the grounds that they are formally placed on the same footing as certain public officials engaged in the administration of the State. Furthermore, the mere fact that public servants are in the category of so-called “white-collar” employees is not in itself conclusive of their qualification as employees “engaged in the administration of the State”; if this were the case, the Convention would be deprived of much of its scope.<sup>397</sup>

## Thematic issues

### Protection against acts of anti-union discrimination and of interference

#### National legislation

173. Under the terms of the first two Articles of Convention No. 98, States are under the obligation to take specific measures to ensure both: (i) the adequate protection of workers against any acts of anti-union discrimination both at the time of taking up employment and in the course of employment, including at the time of the termination of the employment relationship, and covering “acts of anti-union discrimination in respect of their employment” (dismissal, transfer, demotion and other prejudicial acts); and (ii) adequate protection for workers’ and employers’ organizations against “any acts of interference by each other” in their establishment, functioning or administration.

174. *The Committee emphasizes the need to adopt specific legislative provisions in relation to anti-union discrimination and interference, rather than overly vague provisions which may not constitute sufficient and adequate protection within the meaning of the Convention.*<sup>398</sup> It has noted with satisfaction, for example, the modification of the list of prohibited “objects” of anti-union discrimination in *Australia (Western Australia)*<sup>399</sup> (one of which is intended to promote the principles of freedom of association and the right to organize); as well as the adoption of provisions affording protection against acts of anti-union discrimination in *Chile*,<sup>400</sup> *Indonesia*,<sup>401</sup> *Morocco*,<sup>402</sup> *Sudan*<sup>403</sup> and the *Democratic Republic of the Congo*.<sup>404</sup> However,

<sup>394</sup> See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

<sup>395</sup> See, for example, *Cambodia* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Lesotho* – CEACR, observation, 2011.

<sup>396</sup> See, for example, *Mauritania* – CEACR, direct request, 2011.

<sup>397</sup> On this subject, see, for example: Committee on Freedom of Association, Case No. 1557 (United States), Report No. 291, paras 247–285.

<sup>398</sup> See, for example, for comments on insufficient protection, *Georgia* – CEACR, observation, 2010.

<sup>399</sup> *Australia (Western Australia)* – CEACR, observation, 2006.

<sup>400</sup> *Chile* – CEACR, observation, 2002.

<sup>401</sup> *Indonesia* – CEACR, observation, 2002.

<sup>402</sup> *Morocco* – CEACR, observation, 2002.

although in the majority of cases national legislation contains provisions against acts of anti-union discrimination and interference, the extent of the protection afforded varies according to the period covered (hiring, employment and/or dismissal), the persons protected (trade union officers or members), the acts covered and their authors, and the procedures and sanctions established for their enforcement. In certain cases, national legislation contains specific provisions covering, for example, not only prejudice to the employment of a worker by reason of trade union membership, but also the aspiration to join a union,<sup>405</sup> or cancelling clauses prohibiting trade union membership in a contract of employment, as is the case in *Gambia*.<sup>406</sup> Although the Convention allows a certain flexibility in its implementation at the national level and the legislation in many countries affords adequate and sufficient protection against acts of anti-union discrimination and interference, the Committee however notes that there continue to be significant shortcomings in the legislation in other countries.<sup>407</sup> In addition to difficulties relating to the absence of adequate legislative provisions or sufficiently dissuasive sanctions, the Committee also sometimes notes a marked contrast between the legislation, which is in conformity with the Convention, and the absence in practice of protection against acts of discrimination and interference.<sup>408</sup>

**175. *With a view to assessing the general effectiveness of the protection afforded at the national level, the Committee invites governments to provide information, in consultation with the most representative employers' and workers' organizations, on the number of complaints filed with the competent authorities in this field, the outcome of investigations and court proceedings, and the average duration of***

<sup>403</sup> *Sudan* – CEACR, observation, 2005.

<sup>404</sup> *Democratic Republic of the Congo* – CEACR, observation, 2004.

<sup>405</sup> See, for example, *Barbados* – CEACR, observation, 2011.

<sup>406</sup> *Gambia* – CEACR, observation, 2010.

<sup>407</sup> See, for example, *Brazil* – CEACR, direct request, 2010 (need to provide explicitly for remedies and sufficiently dissuasive penalties against acts of anti-union discrimination); *Cambodia* – CEACR, observation, 2011 (the need to take steps without delay to adopt an appropriate legislative framework in full consultation with the social partners to ensure adequate protection against all acts of anti-union discrimination); *Georgia* – CEACR, observation, 2010 (section 11(6) of the Law on trade unions and section 2(3) of the Labour Code prohibit in very general terms anti-union discrimination and do not appear to constitute sufficient protection against anti-union discrimination at the time of the hiring of workers and of termination); *Guinea* – CEACR, observation, 2010 (need to adopt specific provisions to protect all workers against acts of anti-union discrimination at the time of recruitment and during employment and to provide expressly for appeal procedures and sufficiently dissuasive sanctions); *Kiribati* – CEACR, observation, 2011 (necessity for the legislation to include express provision for appeals and to establish sufficiently dissuasive sanctions against acts of anti-union discrimination); *Kuwait* – CEACR, direct request, 2011 (although under section 46 of the new Labour Law, workers cannot be dismissed on the basis of their trade union activities, the new Labour Law does not provide further protection against acts of discrimination or interference by employers or the authorities); *Liberia* – CEACR, observation, 2010 (need to adopt legislation guaranteeing workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions); *Republic of Moldova* – CEACR, observation, 2011 (neither section 61 nor section 55 of the Code on Contraventions provide for sufficiently dissuasive sanctions); *Montenegro* – CEACR, direct request, 2011 (section 172(1)(33) of the new Labour Law does not expressly refer to the acts of anti-union discrimination defined in sections 5 to 10 of the Law, which are linked to the performance of trade union activities by trade union members who are not trade union representatives); *Nepal* – CEACR, observation, 2011 (need to take the necessary measures to introduce into the legislation an explicit prohibition of all prejudicial acts committed against workers by reason of their trade union membership or participation in trade union activities); *Serbia* – CEACR, observation, 2011 (although the Labour Law of 2005 prohibits discrimination on the basis of trade union membership, it does not expressly prohibit discrimination for trade union activities and establishes no specific sanctions for anti-union harassment); and *Zimbabwe* – CEACR, observation, 2011 (see also the conclusions of the Commission of Inquiry, *Official Bulletin*, Vol. XCIII, 2010, Series B, Special Supplement).

<sup>408</sup> See, for example, *Indonesia* – CEACR, observation, 2010.

*proceedings*<sup>409</sup> in both the public and the private sectors.<sup>410</sup> For example, the fact that, in practice, the labour inspectorate and the courts do not intervene, or intervene only very rarely in cases of anti-union discrimination, gives grounds for deep concern by the Committee.<sup>411</sup>

### *Protection against acts of anti-union discrimination*

#### Acts covered

176. *The acts of anti-union discrimination against which, in accordance with the Convention, States have to provide adequate protection in both law and practice include in particular measures with the following objectives: (i) making the employment of a worker subject to the condition that he or she shall not join a union or shall relinquish trade union membership; or (ii) causing the dismissal of or otherwise prejudicing a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours (Article 1(2)).*

177. While the national legislation in several countries guarantees adequate protection against acts of anti-union discrimination – at the time of taking up employment, in the course of employment and at the time of the termination of the employment relationship – other systems only provide such protection against certain acts, or at certain times during the employment relationship.<sup>412</sup> For example, the legislation in certain countries is confined to penalizing dismissal on anti-union grounds,<sup>413</sup> without addressing other acts of discrimination which may occur at the time of recruitment or during the course of the employment relationship. In contrast, in other cases, protection is only provided in relation to recruitment.<sup>414</sup> In this context, the Committee has noted with satisfaction the comprehensive prohibition introduced in 2008 in *Fiji*<sup>415</sup> of acts of discrimination for all types of trade union activity, at all stages of the employment relationship, including recruitment. Since then, the situation of trade union rights in law and practice has seriously deteriorated in the country. The Committee has also noted with interest the new legislation in *Kenya*,<sup>416</sup> which prohibits acts of anti-union discrimination on the basis of trade union membership or activities, both during the recruitment period and the entire course of employment; as well as the legislation in *Uruguay*,<sup>417</sup> which provides for the invalidation of any act or omission, the aim of which is to make the worker's employment contingent on not joining or resigning from a union, or to dismiss a worker or cause her or him any other form of injury because of union membership or

<sup>409</sup> See, for example, *Czech Republic* – CEACR, observation, 2011; *Mozambique* – CEACR, direct request, 2011; and *Serbia* – CEACR, observation, 2011.

<sup>410</sup> *Turkey* – CEACR, observation, 2011.

<sup>411</sup> See, for example, *Indonesia* – CEACR, observation, 2010.

<sup>412</sup> General Survey, 1994, paras 211 et seq.

<sup>413</sup> See, for example, *Eritrea* – CEACR, observation, 2010 (section 28(3) of the Labour Proclamation); *Kuwait* – CEACR, direct request, 2011 (section 46 of the new Labour Law); *Iraq* – CEACR, observation, 2010 (draft Labour Code); and *Saint Kitts and Nevis* – CEACR, direct request, 2010 (section 11 of the Protection of Employment Act).

<sup>414</sup> See, for example, *Kiribati* – CEACR, observation, 2011 (protection against acts of anti-union discrimination exists only at the time of hiring).

<sup>415</sup> *Fiji* – CEACR, observation, 2008.

<sup>416</sup> *Kenya* – CEACR, observation, 2009.

<sup>417</sup> *Uruguay* – CEACR, observation, 2007.

participation in union activities. Finally, recalling that persons other than the workers directly concerned may in turn be victims of discrimination, the Committee has noted with interest the legislative provisions adopted in *Slovenia*,<sup>418</sup> under which persons who help the victims of discrimination may not be exposed to unfavourable consequences.

178. *Recruitment and “blacklists”*. Hiring procedures give rise to specific risks of anti-union discrimination. A worker who is the victim of anti-union discrimination at the hiring stage may face insurmountable difficulties because it will often be virtually impossible to prove that her or his union membership or past trade union activities were the real reason for the refusal of employment.<sup>419</sup> That may be the case, for example, where there is no legislative provision authorizing the job applicant to assert the discriminatory nature of the recruitment procedures before an independent authority or guaranteeing adequate protection within the meaning of *Article 1* of the Convention in such situations. The Committee accordingly considers that the legislation should provide ways to remedy such difficulties, for instance by reversing the burden of proof and/or stipulating that the grounds for the decision not to hire the applicant could be made available upon request where the applicant asserts, by legal means, the anti-union nature of the non-recruitment.<sup>420</sup> ***The practice of so-called “blacklists” of trade union officers, activists or members used in the context of hiring procedures is particularly incompatible with the principles of the Convention.*** In some countries, legislation expressly prohibits such blacklists, treating them as unfair labour practices. Recalling that the secret nature of such lists often makes a dead letter of the remedies laid down by ordinary legislation on the protection of privacy, the Committee encourages governments to take stringent measures and to order the necessary investigations in this respect.<sup>421</sup> In particular, it has noted with satisfaction the legislation adopted on this matter in the *United Kingdom*.<sup>422</sup>

179. Other measures, such as transfer, relocation, demotion, withdrawal of benefits or restrictions of all kinds (remuneration, social benefits, vocational training, etc.) may be adopted for anti-union reasons and cause serious prejudice to the worker concerned.<sup>423</sup> The same applies in certain cases to the non-renewal of contracts of employment, pressure and harassment.<sup>424</sup>

<sup>418</sup> *Slovenia* – CEACR, observation, 2011.

<sup>419</sup> General Survey, 1994, para. 211.

<sup>420</sup> See, for example, *Georgia* – CEACR, observation, 2010.

<sup>421</sup> See, for example, *Ecuador* – CEACR, observation, 2010.

<sup>422</sup> *United Kingdom* – CEACR, observation, 2011. The Employment Relations Act (1999) (Blacklists) Regulations, 2010, aim to ensure that no person shall compile, use, sell or supply a prohibited list, which is defined as a list containing details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment, the payment of wages or the dismissal of workers. The Regulations also establish a list of exceptions to this prohibition in order to protect legitimate or lawful compilation of data.

<sup>423</sup> General Survey, 1994, para. 212.

<sup>424</sup> See, for example, *Belarus* – CEACR, observation, 2011 (the Committee noted with concern that in practice certain fixed-term contracts are terminated or not renewed in the case of trade union activities); and *Ethiopia* – CEACR, observation, 2010 (particularly with regard to teachers).



180. *Dismissal.* Of all forms of anti-union discrimination, dismissal is probably the one with the most serious consequences. *The national situation in several countries continues to give rise to problems of compatibility with the Convention in this field. This is the case of legislation which allows the employer to terminate the employment of a worker unilaterally without giving reasons, on condition that the compensation provided for by law is paid, even when the real motive is the worker's union membership or activities (a situation that the Committee considers contrary to the Convention).*<sup>425</sup> The Committee particularly emphasizes the need to guarantee workers adequate protection against dismissal occurring in the context of industrial action aimed, for example, at obtaining the reinstatement of dismissed workers,<sup>426</sup> or in the context of collective bargaining (particularly the negotiation of multi-business agreements and "pattern bargaining").<sup>427</sup> It also recalls that *dismissals for economic reasons, if they are used as an indirect means of engaging in acts of anti-union discrimination, may give rise to particular problems in relation to the Convention.*<sup>428</sup>

181. In this context, the Committee has noted with satisfaction that the legislation in *Yemen*<sup>429</sup> now provides that no person may be coerced into joining or withdrawing from an organization or from exercising their trade union rights, and that any anti-union act, including dismissal, for trade union activities or membership is prohibited. The Committee has also noted with interest the indication by the Government of *Barbados*<sup>430</sup> that it is in the final stages of drafting new legislation which will, inter alia, make provision for an employment rights tribunal to hear cases of unfair dismissal; and that under the 2003 employment legislation of the *United Kingdom (Jersey)*<sup>431</sup> dismissal is automatically unfair, from day one of employment, where an employee claims to have been dismissed on certain grounds (namely, being or proposing to become a trade union member; taking part in, or proposing to take part in, trade union activities at an appropriate time; not being a trade member, or refusing to become (or remain) a member): furthermore, a tribunal can now issue an order of reinstatement or re-engagement in cases of unfair dismissal (i.e., re-employment under terms which, as far as possible, are as favourable as if the employee had been reinstated, unless the employee was partly to blame for the dismissal).

#### Anti-union dismissal and reinstatement

182. Determining the scope of the concept of "adequate protection" within the meaning of *Article 1(1)* of the Convention is central to issues relating to anti-union dismissal and measures of prevention and compensation. The Committee considers that systems are compatible with the Convention which envisage: (i) preventive measures (such as the need to obtain prior authorization from the judicial authorities, an independent authority or the labour inspectorate for the dismissal of a staff representative or a trade union delegate); (ii) compensation and sufficiently dissuasive sanctions (civil, administrative or

<sup>425</sup> General Survey, 1994, paras 223 and 224. See also, for example, *Georgia* – CEACR, observation, 2010.

<sup>426</sup> See, for example, *United Kingdom* – CEACR, direct request, 2011, Convention No. 87 (concerning section 223 of the Trade Union and Labour Relations Act, 1992).

<sup>427</sup> *Australia* – CEACR, observation, 2010. "Pattern bargaining" may be defined as negotiations seeking common wages or conditions of employment for two or more proposed collective agreements with different employers, or even different subsidiaries of the same parent company.

<sup>428</sup> General Survey, 1994, para. 213.

<sup>429</sup> *Yemen* – CEACR, observation, 2006 (section 8 of Act No. 35 of 2002).

<sup>430</sup> *Barbados* – CEACR, observation, 2011.

<sup>431</sup> *United Kingdom (Jersey)* – CEACR, observation, 2011.

penal) and/or; (iii) the reinstatement of a worker dismissed by reason of trade union membership or legitimate trade union activities with retroactive compensation which, in the absence of preventive judicial or administrative procedures of prior authorization, constitutes the most effective remedy for acts of anti-union discrimination. However, the Committee considers that legislation which allows “unjustified” dismissal (without the reason being indicated to the worker concerned), or which does not explicitly prohibit dismissal for anti-union reasons, is not compatible with the Convention. Whatever the system selected, the authorities responsible for examining the case (the ordinary courts or specialized bodies) need to have all the powers necessary to reach an expeditious and global decision in full independence and to determine the most appropriate remedy in the circumstances. The excessive slowness of reinstatement procedures and failure to comply with court orders for the reinstatement of dismissed trade unionists constitute, in the Committee’s opinion, grave restrictions on the exercise of trade union rights.<sup>432</sup>

183. In practice, although the Convention does not require States to introduce reinstatement provisions in their legislation, an increasing number of systems do so,<sup>433</sup> although certain countries prefer other compensation measures. In the view of the Committee, ***reinstatement should at least be included among the range of measures that can be ordered by the judicial authorities in the event of anti-union discrimination***. Elsewhere, such as in *Brazil*, the dismissal of trade union officers is simply prohibited during a certain period before, during and after their mandate, except in the event of serious fault.<sup>434</sup> However, where a State opts for the principle of reinstatement, the Committee emphasizes the importance of ensuring that the system envisages retroactive wage compensation for the period that elapses between dismissal and the reinstatement or re-employment order, as well as compensation for the prejudice suffered, with a view to ensuring that all of these measures taken together constitute a sufficiently dissuasive sanction. For example, in *France*,<sup>435</sup> a trade union delegate or former trade union delegate is entitled to the payment of compensation corresponding to the whole of the prejudice suffered during the period between dismissal and reinstatement, provided that such compensation has been sought within two months of the notification of the decision; where reinstatement has not been sought, the compensation covers the whole of the prejudice suffered during the period between the dismissal and the end of the two-month period. Moreover, in this country, the refusal to reinstate constitutes, like any other act of anti-union discrimination, a penal infringement which can be punished by a fine or imprisonment.

184. With regard to reinstatement, the Committee has noted with interest, among other cases, the legislation of *Uruguay*,<sup>436</sup> which envisages the possibility of the reinstatement of a worker who has suffered prejudice by means of a special procedure. It has noted with satisfaction the new Labour Act in *Gambia*,<sup>437</sup> which provides for reinstatement

<sup>432</sup> See, for example, *Guatemala* – CEACR, observation, 2010 (court proceedings may last from six to seven years). In its report under article 19 of the Constitution, the Government of *Costa Rica* forwards the observations of the representative organization of employers, which emphasizes the problem of the slowness of procedures for the reinstatement of dismissed trade union leaders. This concern is also regularly raised by workers.

<sup>433</sup> For examples of provisions envisaging reinstatement see: *Eritrea* – CEACR, observation, 2010 (section 28(3) of the Labour Proclamation); *France* (section L.2422 of the Labour Code); *Gambia* – CEACR, observation, 2010 (section 92(2) of the new Labour Act); and *Namibia* – CEACR, direct request, 2010 (Labour Act, 2007).

<sup>434</sup> See the report provided under article 19 of the Constitution by the Government of *Brazil*.

<sup>435</sup> Section L.2422(4) of the Labour Code.

<sup>436</sup> *Uruguay* – CEACR, observation, 2007.

<sup>437</sup> *Gambia* – CEACR, observation, 2010.

and/or financial compensation in cases of dismissal for trade union membership or participation in trade union activities; and the legislation in *Belize*,<sup>438</sup> which now provides that the Supreme Court may order the reinstatement of the worker or measures that it deems just and equitable including, without limitation, orders for the restoration of benefits and other advantages to which the worker was entitled, and the payment of compensation. Moreover, the case law in many countries favours reinstatement. For example, the Constitutional Court in *Spain*<sup>439</sup> found, in a complaint relating to the dismissal for economic reasons of several workers one day after standing for positions as trade union representatives, that any worker dismissed for trade union reasons is entitled to reinstatement. Similarly, the Constitutional Court in *Colombia*,<sup>440</sup> giving effect to Conventions Nos 87 and 98 and the recommendations of the Committee on Freedom of Association in the context of a claim by workers demanding reinstatement following their dismissal for participation in a strike, cancelled the dismissals and ordered the reinstatement of the dismissed workers and the recognition of the salaries and benefits that remained due.

185. *When a country opts for a system of compensation and fines, the Committee considers that the compensation envisaged for anti-union dismissal should fulfil certain conditions: (i) be higher than that prescribed for other kinds of dismissal, with a view to the effective dissuasion of this type of dismissal; (ii) be adapted in accordance with the size of the enterprises concerned (it has considered, for example, that while compensation of up to six months' wages may be a deterrent for small and medium-sized enterprises, that is not necessarily the case for highly productive and large enterprises);*<sup>441</sup> *and (iii) the amount be reviewed periodically (particularly in countries with galloping inflation where the compensation soon becomes merely symbolic), based for example on a minimum number of wage units or units of taxable income.*<sup>442</sup> In this context, the Committee has noted with satisfaction, among others, the reform of the legislation on employment protection in the *United Kingdom (Guernsey)*,<sup>443</sup> which foresees a general six-month pay sanction award for anti-union dismissals, but which may be greater depending on the circumstances of the case in law and in equity.

## Persons protected

186. *Trade union officers and members.* While the Convention requires protection against acts of anti-union discrimination in relation to all workers, the protection provided for in the Convention is particularly important in the case of trade union representatives and officers.<sup>444</sup> One of the ways of ensuring this protection is to provide that trade union representatives may not be dismissed or otherwise prejudiced either during their term of office, or for a specified period following its expiry. Moreover, the

<sup>438</sup> *Belize* – CEACR, observation, 2003.

<sup>439</sup> Constitutional Court, Second Chamber, 23 November 1981, ruling No. 38/1981.

<sup>440</sup> Constitutional Court, Fourth Appellate Supervisory Chamber, *Sindicato de los Trabajadores de las Empresas Varias de Medellín v. Ministry of Labour and Social Security, Ministry of Foreign Affairs, Municipio de Medellín and Empresas Varias de Medellín E.S.P.*, 10 August 1999, ruling No. 206.360.

<sup>441</sup> *Switzerland* – CEACR, observation, 2011.

<sup>442</sup> General Survey, 1994, paras 220 and 221. Moreover, the compensation established by law should not be expressed in absolute figures.

<sup>443</sup> *United Kingdom (Guernsey)* – CEACR, observation, 2009.

<sup>444</sup> The Workers' Representatives Convention (No. 135) and Recommendation (No. 143), 1971, effectively supplement the principles of Convention No. 98.

importance and nature of the duties performed by a trade union representative and the demands made by this kind of office should be taken into account when deciding whether an offence was actually committed and assessing its seriousness.<sup>445</sup> The Workers' Representatives Recommendation, 1971 (No. 143), adds in this respect that the measures which should be taken to ensure effective protection of workers' representatives might include recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce (Paragraph 6(2)(f)).

187. In this context, the Committee has noted with interest the extension of the protection of trade union representatives in *Montenegro*<sup>446</sup> until six months after the termination of their trade union activities, although it is not sufficient, in the view of the Committee, to confine the protection afforded under the Convention to trade union representatives, and it should therefore include workers who are trade union members, but not trade union representatives.<sup>447</sup> The legislation in certain countries has recently been strengthened, or discussions are being held on this matter, including in *Iraq*<sup>448</sup> and the *Netherlands*.<sup>449</sup> Finally, the Committee recalls that the protection afforded by the Convention covers all union committee members, including those of unregistered trade unions.<sup>450</sup>

188. *Public sector workers.* The Committee regularly emphasizes the need to adopt formal provisions clearly recognizing the protection of all public servants and public sector employees not engaged in the administration of the State (including those who are not trade union officers) against acts of anti-union discrimination and interference, and to provide for effective and sufficiently dissuasive sanctions against those responsible for such acts. Although the legislation in many countries does not yet afford sufficient protection in this respect,<sup>451</sup> the Committee has however noted with satisfaction, among others, the legislation adopted in *Panama*,<sup>452</sup> which contains provisions protecting public servants against such acts.

189. *Workers in EPZs.* Many allegations concerning the inadequacy of protection against acts of anti-union discrimination relate to the labour situation in EPZs. The Committee accordingly systematically requests the States concerned to take the necessary measures to ensure that investigations are carried out into these violations of the Convention with a view to identifying responsibilities and punishing those responsible, and it encourages governments to adopt measures to promote the respect,

<sup>445</sup> General Survey, 1994, paras 206 and 207.

<sup>446</sup> *Montenegro* – CEACR, direct request, 2011 (Labour Law (O.G. No. 49/08)).

<sup>447</sup> See, for example, *Guinea* – CEACR, observation, 2010, concerning the need to extend protection to all workers.

<sup>448</sup> *Iraq* – CEACR, observation, 2010 (section 142 of the draft Labour Code).

<sup>449</sup> *Netherlands* – CEACR, observation, 2011.

<sup>450</sup> *Botswana* – CEACR, observation, 2011.

<sup>451</sup> See, for example, *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Madagascar* – CEACR, observation, 2011; *Malta* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

<sup>452</sup> *Panama* – CEACR, observation, 2009 (Act No. 24 of 2 July 2007).

protection and promotion of trade union rights in EPZs, particularly with regard to men and women migrant workers.<sup>453</sup>

#### Effective and rapid procedures

190. *The existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice.* This general principle, which the Committee continually emphasizes, is based on *Article 3* of the Convention, which provides that “[m]achinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in [Articles 1 and 2]”.

191. *Slowness of procedures.* Whether the machinery is based on prevention or compensation, problems arise in practice, particularly with regard to the slowness of procedures.<sup>454</sup> These delays are related to more general problems linked to the weakness of labour inspection and the judicial system as a whole in certain countries. They are also related to difficulties that have to do with the burden of proof and the possibility, which is contested by the Committee, for the employer to be acquitted from the respective obligations by paying compensation which bears no proportion to the seriousness of the prejudice suffered by the worker. With a view to finding a solution, the Committee emphasizes the importance of ensuring without delay independent, expeditious and in-depth investigations in cases of allegations of anti-union discrimination.<sup>455</sup>

#### Burden of proof

192. One of the main difficulties in relation to allegations of discrimination in general, and of anti-union discrimination in particular, relates to the burden of proof. In practice, placing on workers the burden of proving that the act in question occurred as a result of anti-union discrimination may constitute an insurmountable obstacle to establishing liability and ensuring an appropriate remedy. In response, certain States have decided to strengthen the protection of workers by requiring the employer, under certain conditions, to prove that the act of alleged anti-union discrimination was caused by factors other than trade union activity or membership. Provisions introducing a “reversal of the burden of proof” (such as those existing, for example, in *Slovenia*)<sup>456</sup> are among the preventive mechanisms designed to afford protection against anti-union discrimination which, in the view of the Committee, usefully supplement the other types of sanctions and compensation measures that may be adopted in this field. This is also the view of certain national jurisdictions. For example, in *Argentina*,<sup>457</sup> the National Court of Appeal found that, when a worker considers her or himself to be a victim of discrimination, there must be a shifting of the burden of proof whenever the worker can “provide a reasonable indication” of the employer’s hidden reason. Also, the United States Supreme Court has upheld the application of the national law to impose a burden of proof on the employer. Once the worker has established that protected conduct

<sup>453</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Iceland* – CEACR, observation, 2010; *Mauritius* – CEACR, observation, 2011; *Mozambique* – CEACR, direct request, 2011; *Nicaragua* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2011;.

<sup>454</sup> On the issue of the presumed slowness of procedures see, for example, *Belize* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation 2010; and *Czech Republic* – CEACR, observation, 2011.

<sup>455</sup> See, for example, *Belarus* – CEACR, observation, 2011; *Dominican Republic* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

<sup>456</sup> *Slovenia* – CEACR, observation, 2011.

<sup>457</sup> National Court of Appeal, Fifth Chamber, *Parra Vera Maxima v. San Timoteo SA conc.*, 14 June 2006, ruling No. 144/05 68536.

(i.e. trade union activity) was simply one of the factors in the worker's adverse treatment, the burden shifts to the employer to prove that he would have acted against the worker in any event for valid, non-discriminatory reasons.<sup>458</sup> In *Namibia*, proceedings relating to anti-union dismissal carry a presumption that the termination was unfair unless the employer proves to the contrary. Recommendation No. 143 indicates in this respect that "in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative", provision should be made for laying upon the employer "the burden of proving that such action was justified" (Paragraph 6(2)(e)).

#### Effective and sufficiently dissuasive sanctions

193. The effectiveness of legal provisions prohibiting acts of anti-union discrimination depends not only on the effectiveness of the remedies envisaged, but also the sanctions provided for which should, in the view of the Committee, be effective and sufficiently dissuasive. With regard to the form of compensation, its purpose must be to compensate fully, both in financial and occupational terms, the prejudice suffered.<sup>459</sup> In some countries, the law provides for fines and/or imprisonment in cases of anti-union discrimination.<sup>460</sup> Such sanctions, which have the dual purpose of punishing those responsible and acting as a deterrent, are likely to strengthen protection against anti-union discrimination.<sup>461</sup> However, in many cases, the Committee notes that the level of the fines envisaged may not be sufficiently dissuasive (for example, where the amount is not adjusted on the basis of inflation) or the legislation does not allow their level to be adapted based on the size of the enterprise. It therefore invites the States concerned to raise the envisaged level of fines<sup>462</sup> and, with a view to assessing the really dissuasive nature of sanctions, requests the provision of information on the relationship between the amount of the fines and the average wage.<sup>463</sup> Nevertheless, penal sanctions applied in the context of a penal procedure in principle involve a higher level of proof than that required before a labour jurisdiction, and may therefore be less effective in practice.

#### Protection against acts of interference

##### Acts covered, rapid and impartial procedures

**194. *Under the terms of Article 2 of the Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. Acts of interference are deemed to include acts which are designed to***

<sup>458</sup> Supreme Court case *NLRB v. Transportation Management*, 462 US 393 (1983).

<sup>459</sup> General Survey, 1994, para. 219.

<sup>460</sup> See, for example, *Bangladesh* – CEACR, observation, 2011 (sections 195, 196 and 291 of the Labour Act); *Barbados* – CEACR, observation, 2011 (section 40A of the Trade Union Act, CAP 361); *China (Macau Special Administrative Region)* – CEACR, direct request, 2010 (Articles 6 and 10 of Act No. 7/2008 on labour relations); *El Salvador* – CEACR, direct request, 2010 (section 247 of the Penal Code); *Estonia* – CEACR, observation, 2002 (section 184 of the Administrative Offences Code); *Peru* – CEACR, observation, 2011 (section 25 of the Regulations of the General Labour Inspection Act); *Romania* – CEACR, observation, 2011 (Act No. 54/2003); *Sri Lanka* – CEACR, observation, 2002 (section 40(1)(1A) of the Industrial Disputes (Amendment) Act, No. 56 of 1999).

<sup>461</sup> General Survey, 1994, para. 222.

<sup>462</sup> See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burundi* – CEACR, observation, 2011; *Eritrea* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *Republic of Moldova* – CEACR, observation, 2011; *Poland* – CEACR, observation, 2011; *Romania* – CEACR, observation, 2011; *Rwanda* – CEACR, observation, 2011; and *Saint Kitts and Nevis* – CEACR, observation, 2011.

<sup>463</sup> See, for example, *Mozambique* – CEACR, direct request, 2011; and *Sri Lanka* – CEACR, observation, 2011.

*promote the establishment of workers' organizations under the domination of an employer or an employers' organization, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations.* Similarly, discrimination against a representative employers' organization, for example through its exclusion from participation in the preparation of labour legislation or consultations on social and economic matters, would not be in conformity with the Convention.<sup>464</sup> Finally, in the same way as for discrimination, machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for *Article 2*.

195. Some of the legislative provisions which protect workers' and employers' organizations directly or indirectly against acts of interference by each other are of a general nature, either providing for the independence of trade unions vis-à-vis any other organization, or incorporating the terms of the Convention. Others are more specific and stipulate the prohibited measures (such as interference in the establishment or administration of trade unions; activities aimed at restricting the right of workers to join together in trade unions or at exercising control over their organizations; means of pressure in favour of or against any trade union organization; payments intended to subvert trade union leaders; etc.).

196. In practice, although the Committee emphasizes the need for the legislation to make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, explicit provisions in this field are less frequent than those intended to protect workers against acts of anti-union discrimination. In the view of the Committee, protection against acts of interference remains non-existent or inadequate in a large number of countries.<sup>465</sup> Indeed, certain governments tend to consider that trade unions are sufficiently developed and strong to be protected against any acts of interference or that, because of trade union plurality, no problem arises in this connection.<sup>466</sup> With regard to the contribution of employers to the financing of trade unions, or affording trade union organizations certain facilities, the Committee considers that, while there is no objection in principle to a public or private employer expressing its wish to promote the capacity of a trade union as a social partner in this manner, this should not have the effect of allowing the employer control over the trade union, or of favouring one trade union over another.<sup>467</sup> It is essential for workers'

<sup>464</sup> Report of the Commission of Inquiry, *Nicaragua*, *Official Bulletin*, Vol. LXXIV, 1991, para. 524.

<sup>465</sup> See, for example, *Bahamas* – CEACR, direct request, 2011; *Bangladesh* – CEACR, observation, 2010; *Belarus* – CEACR, observation, 2011; *Botswana* – CEACR, observation, 2011; *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Central African Republic* – CEACR, direct request, 2010; *Ethiopia* – CEACR, observation, 2010; *Guinea* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Kenya* – CEACR, observation, 2011; *Jordan* – CEACR, observation, 2010; *Kiribati* – CEACR, observation, 2011; *Liberia* – CEACR, observation, 2011; *Montenegro* – CEACR, direct request, 2011; *Nepal* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Slovenia* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2011; *United Kingdom (Bermuda)* – CEACR, observation, 2011; and *United Kingdom (Jersey)* – CEACR, observation, 2011. In its report provided under article 19 of the Constitution, the Government of Mexico indicates that, although the national legislation contains provisions prohibiting acts of anti-union discrimination, it does not include a specific provision protecting workers' and employers' organizations against acts of interference by each other.

<sup>466</sup> General Survey, 1994, paras 230 et seq. See, for example, *Bulgaria* – CEACR, observation, 2011; *Hungary* – CEACR, observation, 2011; and *Saint Kitts and Nevis* – CEACR, direct request, 2010, and observation, 2011 (the Government indicates that the principle of protection against any acts of interference is ensured by custom and practice).

<sup>467</sup> General Survey, 1994, para. 229. For example, in its report provided under article 19 of the Constitution, the Government of the United States indicates that the Labor Management Relations Act also protects labour organizations from employer interference by generally prohibiting the payment of anything of value by an

and employers' organizations to maintain their independence so that they can defend the interests of their members effectively.

#### Effective and sufficiently dissuasive sanctions

197. ***“Adequate protection” against acts of interference within the meaning of the Convention requires the establishment of rapid appeal procedures and sufficiently decisive sanctions against such acts.*** However, as in the case of anti-union discrimination, certain of the sanctions established by States against acts of interference, where they exist, do not fully meet the requirements of effectiveness and deterrence developed by the Committee.<sup>468</sup> Nevertheless, some countries have recently made interesting progress in this respect. For example, the Committee has noted with satisfaction that the Penal Code in *Nicaragua*<sup>469</sup> now imposes a fine ranging from 90 to 300 days of workers' wages on any employer, manager or administrator who finances or promotes organizations intended to restrict or impede the full freedom and autonomy of trade unions; that the Labour Act in *Gambia*<sup>470</sup> prohibits an employer from promoting the establishment of workers' associations under its domination and provides for a sanction of not less than 50,000 *dalasis* (around US\$1,770) in the event of non-compliance with this provision; and that employers' organizations and the public authorities in *Estonia*<sup>471</sup> are prohibited from interfering in the affairs of trade unions and fines of between 100 and 200 days' wages may be imposed in such cases. It has also noted with satisfaction the provisions adopted in this field in *Morocco*<sup>472</sup> and *Indonesia*.<sup>473</sup> Finally, it has noted with interest the entry into force of the new Labour Law in *Montenegro*,<sup>474</sup> which provides for stronger financial sanctions against acts of interference in trade union activities and it has welcomed the fact that in this country penalties can be imposed on the enterprise (legal entity), the employer (physical person) as well as the employer-entrepreneur (entity-employer), when the employer fails to allow employees the free exercise of their trade union rights, or fails to provide the trade union with the conditions necessary for exercising trade union rights.

## Promotion of collective bargaining

### National legislation

198. Under the terms of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, ***collective bargaining is a fundamental right accepted by member States from the very fact of their membership in the ILO, and which they have an obligation***

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employer to any representative of the employees of an employer, to any labour organization or to any labour organization officer or agent. In addition, no payments may be made to a group of employees in excess of their normal wages and compensation for the purpose of causing the group to influence other employees in the exercise of their right to bargain collectively.

<sup>468</sup> See, for example, *Burundi* – CEACR, observation, 2011; *Eritrea* – CEACR, observation, 2011; *Republic of Moldova* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Romania* – CEACR, observation, 2011.

<sup>469</sup> *Nicaragua* – CEACR, observation, 2010.

<sup>470</sup> *Gambia* – CEACR, observation, 2010.

<sup>471</sup> *Estonia* – CEACR, observation, 2002.

<sup>472</sup> *Morocco* – CEACR, observation, 2002.

<sup>473</sup> *Indonesia* – CEACR, observation, 2002.

<sup>474</sup> *Montenegro* – CEACR, direct request, 2011.



*to respect, to promote and to realize in good faith.*<sup>475</sup> In this respect, *Article 4* of Convention No. 98 sets out two essential elements: action by the public authorities to promote collective bargaining; and the voluntary nature of negotiation, which implies the autonomy of the parties.<sup>476</sup> Although this provision does not imply a formal obligation to negotiate and to reach agreement, the supervisory bodies consider that the parties must respect the principle in good faith and not resort to unfair or abusive practices in this context (such as, for example, the non-recognition of representative organizations, obstruction of the bargaining process, etc.). The Committee emphasizes that the overall aim of this Article is, however, the promotion of good-faith collective bargaining with a view to reaching an agreement on terms and conditions of employment. The agreements so concluded must be respected and must be able to establish conditions of work more favourable than those envisaged in law: indeed, if this were not so, there would be no reason for engaging in collective bargaining.<sup>477</sup>

199. While law or practice in the vast majority of countries recognizes the right of all workers to negotiate collectively through their trade unions, even though the extent to which collective bargaining is promoted varies, certain systems continue to deprive important categories of workers of this right. These restrictions are in addition to two trends to which the Committee draws attention. The first is the tendency for the legislature in several countries to give precedence to individual rights over collective rights in employment matters. This tendency runs counter to ILO principles, and particularly the Collective Agreements Recommendation, 1951 (No. 91), which recalls the principle of the binding effects of collective agreements and their primacy over individual contracts of employment (with the exception of provisions in the latter which are more favourable to the workers covered by the collective agreement). Secondly, in certain countries, direct agreements between employers and groups of non-unionized workers are much more numerous than the collective agreements concluded with the representative organizations of workers.<sup>478</sup> This shows that the obligation to promote collective bargaining within the meaning of *Article 4* is not yet fully respected.

## Scope of collective bargaining

### *Free and voluntary negotiation and autonomy of the parties*

200. *Under the terms of Article 4 of the Convention, collective bargaining must be free and voluntary and respect the principle of the autonomy of the parties.* However, the public authorities are under the obligation to ensure its promotion.<sup>479</sup> Interventions by the authorities which have the effect of cancelling or modifying the content of collective agreements freely concluded by the social partners would therefore be contrary to the principle of free and voluntary negotiation.<sup>480</sup> The detailed regulation of

<sup>475</sup> *ILO Declaration on Fundamental Principles and Rights at Work*, para. 2.

<sup>476</sup> General Survey, 1994, paras 235–265.

<sup>477</sup> “Collective agreements” have the force of law in many countries, while “direct agreements” do not sometimes have this binding force.

<sup>478</sup> See, for example, *Costa Rica* – CEACR, observation, 2010.

<sup>479</sup> For example, in its report provided under article 19 of the Constitution, the Government of the United States indicates that “the duty to bargain does not include a duty to make concessions, nor does it compel either party to agree to a proposal made by the other party. In addition, the government cannot compel the parties to agree”.

<sup>480</sup> For example, the suspension or cancellation of collective agreements by decree without the agreement of the parties; the interruption of agreements negotiated previously; the requirement to renegotiate agreements freely entered into; the cancellation of collective agreements or the forced renegotiation of agreements that are in force.

negotiations by law would also infringe the autonomy of the parties.<sup>481</sup> However, in the view of the Committee, machinery to support bargaining, such as information, conciliation, mediation or voluntary arbitration, is admissible. Such measures exist in many countries.

201. *Prior approval by the authorities.* One of the main restrictions on the principle of free and voluntary collective bargaining consists of the obligation to submit collective agreements for prior approval by the authorities (and particularly the administrative or budgetary authorities). In the view of the Committee, such provisions are only compatible with the Convention when they are confined to stipulating that approval may be refused if the agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation.<sup>482</sup> On the other hand, if legislation allows the authorities full discretion to deny approval or stipulates that approval must be based on criteria such as compatibility with the general or economic policy of the government, or official directives on wages and conditions of employment, it in fact makes the entry into force of the agreement subject to prior approval, which is in violation of the principle of the autonomy of the parties.<sup>483</sup> In such cases, the Committee pays great attention to evaluating the consequences of provisions which authorize in general terms the evaluation, or even cancellation by the authorities of collective agreements for reasons related to the protection of the public interest or similar concepts (“public order”, “morals”, the “economic interests of the nation”, etc.),<sup>484</sup> which are liable in principle to give rise to problems of compatibility with the Convention. Moreover, while the Committee has on occasion considered that the Convention could be compatible with systems requiring parliamentary approval for certain labour conditions or financial clauses of collective agreements in the public sector,<sup>485</sup> it considers that problems of compatibility with the Convention arise in relation to provisions requiring agreements to be negotiated in commissions appointed or controlled by the government.<sup>486</sup> With regard to the compulsory extension of the validity of collective agreements prescribed by law (which is different from the issue of the continuing effect of collective agreements upon their expiry stipulated in certain legislations when the parties fail to agree on the terms of a new collective agreement), in the view of the Committee this would only be admissible on an exceptional basis in cases of acute national or local crisis of a non-economic nature and for short periods.

202. In this context, the Committee has also noted with satisfaction in *Argentina*<sup>487</sup> the removal of provisions restricting free collective bargaining by requiring the approval of the Ministry of Labour for collective agreements which were broader in coverage than

<sup>481</sup> *Cuba* – CEACR, observation, 2010.

<sup>482</sup> General Survey, 1994, para. 251.

<sup>483</sup> *ibid.*

<sup>484</sup> Examples of countries in which clauses or collective agreements may be cancelled for such reasons include: *Brazil* – CEACR, observation, 2010 (section 623 of the Consolidation of Labour Laws); *Egypt* – CEACR, observation, 2011 (section 154 of the Labour Code); *Papua New Guinea* – CEACR, observation, 2011 (section 51 of the Sixth (final) Draft Industrial Relations Bill); *Yemen* – CEACR, observation, 2011 (sections 32(6) and 34(2) of the Labour Code); and *Zimbabwe* – CEACR, observation, 2011 (sections 78 and 79 of the Labour Act).

<sup>485</sup> See, for example, *Philippines* – CEACR, observation, 2011.

<sup>486</sup> See, for example, *Bangladesh* – CEACR, observation, 2011 (section 3 of Act No. X of 1974 (fixing of wage rates and other conditions of employment of public servants)); and *Rwanda* – CEACR, observation, 2011 (section 121 of the Labour Code).

<sup>487</sup> *Argentina* – CEACR, observation, 2005.

enterprise agreements; the repeal of a provision in *Singapore*<sup>488</sup> under the terms of which, in certain new undertakings, the approval of the competent minister had to be sought if the annual leave and sick leave benefits stipulated in the collective agreement were more favourable than those set out in law; the repeal of provisions in *Zimbabwe*<sup>489</sup> which established a requirement for collective agreements to be submitted for ministerial approval in order to ensure that their provisions are equitable to consumers, to members of the public generally or to any other party to the collective bargaining agreement; the new legislation in the *United Republic of Tanzania*,<sup>490</sup> which brings an end to the power of the Industrial Court to refuse the registration of a collective agreement if it is not in conformity with the Government's economic policy; and the repeal in the *Syrian Arab Republic*<sup>491</sup> of the provision which allowed the authorities to refuse approval of a collective agreement or to quash any clause liable to harm the country's economic interests.

203. *Taking the public interest into account.* While the discretionary power of the authorities to approve collective agreements is contrary to the principle of collective bargaining, the Committee admits that the public authorities may establish machinery for discussion and the exchange of views to encourage the parties to collective bargaining to take voluntary account of government social and economic policy considerations and the protection of the public interest. In case of dispute, the issue could, for example, be submitted for advice and recommendation to an appropriate joint body, provided that the final decision rests with the parties.<sup>492</sup>

204. *Privatization and enterprise closure.* The Committee considers that the restructuring or privatization of an enterprise should not in itself result automatically in the extinction of the obligations resulting from the collective agreement in force and that the parties should be able to take a decision on this subject and to participate in such processes through collective bargaining.<sup>493</sup> Furthermore, in the event of enterprise closure, the relevant clauses of agreements that are in force, particularly respecting benefits and compensation, should continue to be applicable. As emphasized by the Global Jobs Pact, in order to "prevent a downward spiral in labour conditions and build the recovery, it is especially important" to emphasize "the effective recognition of the right to collective bargaining" as an enabling mechanism "to productive social dialogue in times of increased social tension, in both the formal and informal economies".<sup>494</sup>

205. *Intervention of higher level organizations.* The interference, as set out in law, of higher level organizations in the bargaining process undertaken by lower level organizations is incompatible with the autonomy that must be enjoyed by the parties to bargaining.<sup>495</sup> The same applies to the requirement that organizations must be affiliated

<sup>488</sup> *Singapore* – CEACR, observation, 2005.

<sup>489</sup> *Zimbabwe* – CEACR, observation, 2007. The provision authorizing the submission of agreements for ministerial approval where the agreement is or has become unreasonable or unfair, having regard to the respective rights of the parties, has not been repealed.

<sup>490</sup> *United Republic of Tanzania* – CEACR, observation, 2005.

<sup>491</sup> *Syrian Arab Republic* – CEACR, observation, 2002.

<sup>492</sup> General Survey, 1994, paras 252 and 253.

<sup>493</sup> *Armenia* – CEACR, direct request, 2010.

<sup>494</sup> *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 2009, para. 14(1)(ii).

<sup>495</sup> *Egypt* – CEACR, observation, 2011.

with a national organization in order to be able to conclude sectoral and branch level agreements.<sup>496</sup>

206. *Scrutiny of the constitutionality of clauses of agreements.* Finally, in the view of the Committee, except where there are instances of serious breaches of constitutional rights in certain clauses of collective agreements (for example, if they establish wage discrimination on the basis of sex), collective bargaining, as an instrument of social peace, cannot be repeatedly subjected to recurrent scrutiny as to constitutionality without losing its credibility and usefulness.<sup>497</sup>

207. The Committee considers that a practice whereby the authorities almost systematically challenge the benefits awarded to public sector workers on the basis of considerations related to “rationality” or “proportionality” with a view to their cancellation (by reason, for example, of their cost deemed to be excessive) would seriously jeopardize the very institution of collective bargaining and weaken its role in the settlement of collective disputes. However, if the collective agreement contains provisions that are contrary to fundamental rights (e.g. non-discrimination), the judicial authority could nullify these provisions so as to ensure respect of higher standards.

#### *Negotiation in good faith*

208. ***The principle of negotiation in good faith, which is derived from Article 4 of the Convention, takes the form, in practice, of various obligations on the parties involved, namely: (i) recognizing representative organizations; (ii) endeavouring to reach agreement; (iii) engaging in real and constructive negotiations; (iv) avoiding unjustified delays in negotiation; and (v) mutually respecting the commitments made and the results achieved through bargaining.*** In general, evaluation of compliance with the obligation upon the parties to negotiate in good faith and its consequences is entrusted to specialized bodies, and in several countries the legislation makes the employer liable to sanctions for refusing to recognize the representative trade union, an attitude which may be considered as an unfair labour practice.<sup>498</sup> The Committee does not consider that this approach is incompatible with Convention No. 98.

#### *Workers covered by collective bargaining*

209. With the exception of organizations representing categories of workers which may be excluded from the scope of the Convention, namely the armed forces, the police and public servants engaged in the administration of the State, recognition of the right to collective bargaining is general in scope and all other organizations of workers in the public and private sectors must benefit from it. However, the recognition of this right in law and practice continues to be restricted or non-existent in certain countries. This situation has given the Committee cause to recall that the right to collective bargaining should also cover organizations representing the following categories of workers: prison staff,<sup>499</sup> fire service personnel,<sup>500</sup> seafarers,<sup>501</sup> self-employed and temporary

<sup>496</sup> Bulgaria – CEACR, observation, 2011 (section 51(b)(1) and (2) of the Labour Code).

<sup>497</sup> Costa Rica – CEACR, observation, 2010.

<sup>498</sup> General Survey, 1994, para. 243. For example, in its report provided under article 19 of the Constitution, the Government of New Zealand indicates that “the Employment Relations Authority and the Employment Court may have regard to an approved code of good faith to determine if the employers and unions have dealt with each other in good faith while conducting collective bargaining. Penalties may apply in some circumstances for breaches of good faith, including undermining collective bargaining”.

<sup>499</sup> See, for example, Bahamas – CEACR, observation, 2010; Kiribati – CEACR, observation, 2011; Saint Lucia – CEACR, direct request, 2010; Seychelles – CEACR, observation, 2011; and United Republic of Tanzania – CEACR, observation, 2011.

workers,<sup>502</sup> outsourced or contract workers,<sup>503</sup> apprentices, non-resident workers and part-time workers,<sup>504</sup> dockworkers,<sup>505</sup> agricultural workers,<sup>506</sup> workers in religious or charity organizations,<sup>507</sup> domestic workers, workers in EPZs and migrant workers.<sup>508</sup> The Committee further emphasizes that the right to collective bargaining should be recognized for teaching personnel and managerial personnel in educational institutions, as well as staff engaged in technical and managerial functions in the education sector.<sup>509</sup> In this context, it has recently noted with satisfaction the establishment of the universal nature of the right to collective bargaining for all workers in the Constitutions of the *Plurinational State of Bolivia*<sup>510</sup> and *Kenya*,<sup>511</sup> as well as the amendments to the Labour Code in *Chile*<sup>512</sup> making collective bargaining accessible to temporary and occasional workers. It has also noted with interest the decision by the Superior Court of Quebec (Canada),<sup>513</sup> which held that the Act amended the Act respecting health services and social services and the Act amended the Act respecting early childhood centres and other nursery services were unconstitutional as they were contrary to the Canadian Charter of Rights and Freedoms; following this ruling, the legislation established rules for the recognition of associations in this sector and collective bargaining between these associations and the Government.

210. Finally, with regard to federations and confederations,<sup>514</sup> the Committee considers that any restriction or prohibition of their right to collective bargaining would be contrary to *Article 4* of the Convention.<sup>515</sup>

#### The public sector and the public service

211. Collective bargaining in the public service has special characteristics which are found in various degrees in most countries, principally in view of the twofold responsibility of the State in this sphere, since it is both the employer and the legislative authority which is ultimately responsible to the electorate for the allocation and management of its resources. In this respect, the Committee notes with interest the

<sup>500</sup> See, for example, *Bahamas* – CEACR, observation, 2010; and *Saint Lucia* – CEACR, direct request, 2010.

<sup>501</sup> See, for example, *Benin* – CEACR, direct request, 2010 (merchant navy); *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Iceland* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011 (fishing sector).

<sup>502</sup> See, for example, *Senegal* – CEACR, direct request, 2011; and *Tunisia* – CEACR, direct request, 2011.

<sup>503</sup> See, for example, *Ecuador* – CEACR, observation, 2010; and *Netherlands* – CEACR, observation, 2011.

<sup>504</sup> See, for example, *China (Macau Special Administrative Region)* – CEACR, direct request, 2010.

<sup>505</sup> See, for example, *Guinea-Bissau* – CEACR, observation, 2011.

<sup>506</sup> *ibid.*

<sup>507</sup> See, for example, *Ethiopia* – CEACR, observation, 2010.

<sup>508</sup> See, for example, *Bangladesh* – CEACR, observation, 2010; *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Eritrea* – CEACR, observation, 2011; and *Kuwait* – CEACR, direct request, 2011.

<sup>509</sup> See, for example, *Cambodia* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Lesotho* – CEACR, observation and direct request, 2011.

<sup>510</sup> *Plurinational State of Bolivia* – CEACR, observation, 2010.

<sup>511</sup> *Kenya* – CEACR, observation, 2011.

<sup>512</sup> *Chile* – CEACR, observation, 2002.

<sup>513</sup> Canada – CEACR, observation, Convention No. 87, 2010.

<sup>514</sup> See, for example, *Namibia* – CEACR, direct request, 2011; and *Uganda* – CEACR, observation, 2010.

<sup>515</sup> General Survey, 1994, para. 249.

*Health Services and Support* ruling of the Supreme Court of Canada in 2007 confirming that the freedom of association guaranteed by section 2(d) of the Canadian Charter of Rights and Freedoms includes the right to a process of collective bargaining for employees in the public sector.<sup>516</sup>

212. Certain countries in which the legislation regulates exhaustively all or certain of the conditions of employment of public servants consider that the status of public servant is incompatible with any notion of collective bargaining or freedom of association. Other countries have established systems which make it possible to reconcile the status of public servants with collective bargaining. For example, in *Spain*, the subjects which must necessarily be regulated by law may be covered by a collective accord between the public authorities and the trade union organizations of public servants with a view to ensuring that the authorities submit draft legislation to amend the law in the matter. In this context, ***the Committee recalls that only public servants “engaged in the administration of the State” may be excluded from the scope of the Convention,***<sup>517</sup> ***but that collective bargaining may be subject to specific arrangements in relation to this category of public servants.*** In practice, the general trend, which has been confirmed over the years, is to recognize the right to collective bargaining in the public sector, including public servants, either in law or in practice. However, it may also happen that it is not obstacles of a legislative nature, but rather practical considerations which prevent public servants from engaging in collective bargaining (for example, in the case of the refusal by the authorities to recognize trade union organizations on the grounds of an alleged delay in the holding of elections for the executive boards of organizations of public service personnel).<sup>518</sup>

213. Over recent years, the Committee has welcomed several positive developments. Among others, it has noted with satisfaction the recognition in the Constitution of *Turkey*<sup>519</sup> of the right of “public servants and other public employees” to conclude collective agreements; the adoption of specific legislation on collective bargaining in the public sector in *Colombia*<sup>520</sup> and *Uruguay*;<sup>521</sup> recognition of the right to collective bargaining of public servants in *Lesotho*<sup>522</sup> and *Botswana*;<sup>523</sup> as well as the fact that, following a legislative reform that is under way in *Japan*,<sup>524</sup> several issues could henceforth be covered by collective bargaining in public enterprises. Finally, it has welcomed the recognition by the Supreme Court of *Costa Rica*<sup>525</sup> of the principle that

<sup>516</sup> *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 R.C.S. 391.

<sup>517</sup> The situation of the public service is dealt with in the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), 1978, in terms similar to those of Convention No. 98.

<sup>518</sup> *Bolivarian Republic of Venezuela* – CEACR, observation, 2011. The Committee requested the Government to ensure that these organizations are able to elect their bodies without any interference whatsoever from the National Electoral Council (which is not a judicial body, but which may hear any claim from a small group of workers and hold up the endorsement of the elections).

<sup>519</sup> *Turkey* – CEACR, observation, 2011.

<sup>520</sup> *Colombia* – CEACR, observation, 2010.

<sup>521</sup> *Uruguay* – CEACR, observation, 2011.

<sup>522</sup> *Lesotho* – CEACR, observation, 2006.

<sup>523</sup> *Botswana* – CEACR, observation, 2005.

<sup>524</sup> In its report provided under article 19 of the Constitution, the Government of *Japan* indicates that it is currently determining a system to grant the right to conclude collective agreements in the public sector.

<sup>525</sup> *Costa Rica* – CEACR, observation, 2010 (several unanimous decisions (Second Chamber of the Supreme Court of Justice)).

collective agreements in the public sector are constitutional and that allowing collective bargaining should be the rule, and to restrict it the exception. Many other countries, however, do not yet fully guarantee the right of organizations of public servants and public employees not engaged in the administration of the State to negotiate wages and other conditions of work in accordance with the Convention,<sup>526</sup> or only grant public servants a right of consultation, and not negotiation, on issues relating to their terms and conditions of employment.<sup>527</sup>

214. *Bipartite or tripartite bargaining.* In general, the Convention tends essentially to promote the bipartite negotiation of terms and conditions of employment, namely between employers and employers' organizations, on the one hand, and workers' organizations, on the other. However, the Committee acknowledges that tripartism, which includes the public authorities, may be appropriate for the settlement of issues that are broader in scope, such as the formulation of legislation or economic and social policy. The presence of the government may also be justified if the general collective agreement is limited to fixing the rate of the minimum wage, although the negotiation of other terms and conditions of employment must be undertaken in a bipartite context and the parties must enjoy full autonomy in this respect in order to ensure that the content of the agreements so concluded is not dependent on the policy choices of successive governments.

## Content of collective bargaining

215. Conventions Nos 98, 151 and 154 and Recommendation No. 91 focus the content of collective bargaining on terms and conditions of work and employment, and on the regulation of relations between employers and workers and their respective organizations. ***The concept of "conditions of work" covers not only traditional working conditions (the working day, additional hours, rest periods, wages, etc.), but also subjects that the parties decide freely to address, including those that are normally included in the field of terms and conditions of employment in the strict sense (promotion, transfer, dismissal without notice, etc.).*** In practice, although conditions of work remain essential issues addressed by most collective agreements, the range of the subjects addressed has progressively broadened to reflect the evolution of industrial relations. Agreements increasingly frequently cover issues related, for example, to recruitment levels, safety and health, restructuring processes, training, discrimination and supplementary social security benefits. Agreements are also sometimes used to institutionalize procedures on dispute settlement machinery, and to prevent strikes. Finally, they may also be used,

<sup>526</sup> See, for example, *Bulgaria* – CEACR, observation, 2010; *Burundi* – CEACR, observation, 2011; *Cambodia* – CEACR, observation, 2011; *Chile* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2009; *Eritrea* – CEACR, observation, 2011; *Guinea-Bissau* – CEACR, observation, 2011; *Equatorial Guinea* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Japan* – CEACR, observation 2010, Convention No. 87; *Liberia* – CEACR, observation, 2011; *Madagascar* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Sao Tome and Principe* – CEACR, observation, 2011; *Sri Lanka* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observations, 2009 and 2010, and direct request, 2007; *Uganda* – CEACR, observation, 2011; *Uzbekistan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation and direct request, 2010.

<sup>527</sup> See, for example, *China (Hong Kong Special Administrative Region)* – CEACR, observation, 2010. Furthermore, in its report under article 19 of the Constitution, the Government of the United States indicates that Executive Order No. 13522 signed in December 2009 creates the national Council on Federal Labor–Management Relations to advise the President on matters involving labour–management relations in the executive branch; requires all federal agencies to create labour–management forums; and establishes pilot projects in which certain executive departments will elect to bargain over certain permissive issues. The experiences gained through these pilots will be compiled into a report containing recommendations for the federal employee bargaining process.

where appropriate, to obtain arrangements for the benefit of workers, particularly with regard to their welfare (enterprise doctors, works stores, loan agreements, housing assistance, etc.).<sup>528</sup> Whatever the content, the Committee considers that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are generally incompatible with the Convention;<sup>529</sup> and that tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties.<sup>530</sup>

216. The supervisory bodies have acknowledged certain restrictions on the subjects which may be covered by collective bargaining. They have considered, for example, that the employer's management prerogatives (such as the allocation of tasks and recruitment) could be excluded from negotiable issues. Moreover, certain subjects could be prohibited for reasons of public order, such as discriminatory clauses, trade union security clauses and clauses contrary to the minimum level of protection envisaged in the legislation. The Committee on Freedom of Association has also considered that "matters which clearly appertain primarily or essentially to the management and operation of government business" can reasonably be regarded as outside the scope of negotiation.<sup>531</sup>

217. In practice, the Committee has considered that it should be possible for issues relating to transfer, dismissal and reinstatement, if the parties so agree, to be included in negotiations and not to be determined solely by law,<sup>532</sup> and that the same applies to issues relating to the deduction of trade union dues,<sup>533</sup> as well as to facilities in favour of trade union representatives.

#### *Pensions or supplementary retirement schemes and wages in the public service*

218. The inclusion in the scope of collective bargaining of issues related to pensions and supplementary retirement schemes raises specific difficulties with regard to the macroeconomic consequences on supplementary pension schemes for public employment of modifications to the social security system. Called upon to address this issue in the context of specific national situations, the Committee has based its examination in part on the decisions of the Committee on Freedom of Association in this respect. It has accordingly endorsed the opinion of the Committee on Freedom of Association that supplementary pension schemes may legitimately be considered benefits that can be the subject of collective bargaining.<sup>534</sup>

<sup>528</sup> For example, in its report under article 19 of the Constitution, the Government of the United States indicates that, in addition to non-discrimination provisions, many collective bargaining agreements call for final and binding arbitration of workplace grievances by a neutral third party, the production of information by signatory employers and unions to be shared among the parties to facilitate subsequent collective bargaining efforts, and the payment of wages by employers to bargaining unit employees for time performing "official duties" in support of rights under the collective bargaining agreement.

<sup>529</sup> See, for example, *Croatia* – CEACR, observation, 2010; and *Fiji* – CEACR, observation, 2010.

<sup>530</sup> General Survey, 1994, para. 250.

<sup>531</sup> Committee on Freedom of Association, *Digest*, 2006, op. cit., paras 920–922. These relate in particular to staffing levels or the departments affected by financial difficulties, as well as the determination of the broad lines of educational policy.

<sup>532</sup> See, for example, *Malaysia* – CEACR, observation, 2010 (concerning section 13(3) of the Industrial Relations Act, 1967).

<sup>533</sup> *Congo* – CEACR, direct request, 2011.

<sup>534</sup> See, for example, *Colombia* – CEACR, observation, 2010 (Legislative Act No. 01 of 2005 limits the right to engage in collective bargaining on pensions); *Greece* – CEACR, observation, 2010 (Act No. 1876/1990 provides



219. With regard to wages in the public service, the Committee considers that *public servants not engaged in the administration of the State should be able to negotiate collectively their wage conditions and that mere consultation of the unions concerned is not sufficient to meet the requirements of the Convention in this respect.*<sup>535</sup> *However, the special characteristics of the public service described above require some flexibility, particularly in view of the need for the state budget to be approved by parliament.* In practice, in many countries, the negotiation of wages in the public administration is separate from the negotiation of other conditions of work and often focuses on the determination of overall percentages for the administration as a whole. The Committee considers that legislative provisions which allow the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall “budgetary package”, within which the parties may negotiate monetary or standard-setting clauses, or those which give the financial authorities the right to participate in collective bargaining alongside the direct employer, are compatible with the Convention, provided that they leave a significant role to collective bargaining. It is essential, however, that workers and their organizations are able to participate fully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data necessary for this purpose.<sup>536</sup>

220. This is not the case of legislative provisions which, on the grounds of the economic situation of the country, unilaterally impose a “wage freeze” or a specific percentage wage increase and rule out any possibility of bargaining. While taking fully into account the serious financial and budgetary difficulties that have to be faced at times by governments, the Committee considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. It also considers that *limitations on the content of future collective agreements, particularly in relation to wages, imposed by the authorities, by virtue of economic stabilization or structural adjustment policies that have become necessary, are admissible on condition that they have been subject to prior consultations with workers’ and employers’ organizations and meet the following conditions: (i) they are applied as an exceptional measure; (ii) they are limited to the extent necessary; (iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected.*<sup>537</sup> In practice, although certain States continue to exclude wages from the scope of collective bargaining in the public service,<sup>538</sup> the Committee has welcomed the progress achieved in others, including in Kiribati,<sup>539</sup> The former Yugoslav Republic of Macedonia<sup>540</sup> and Mauritius.<sup>541</sup>

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that retirement related matters are excluded from the scope of collective labour agreements); and *Philippines* – CEACR, observation, 2011 (matters relating to retirement pensions are not negotiable).

<sup>535</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2009.

<sup>536</sup> General Survey, 1994, para. 263.

<sup>537</sup> General Survey, 1994, para. 260. See, for example, *Greece* – CEACR, observation, 2011; and *Romania* – CEACR, observation, 2011.

<sup>538</sup> See, for example, *Burundi* – CEACR, observation, 2011; *Philippines* – CEACR, observation 2011; and *Romania* – CEACR, observation, 2011.

<sup>539</sup> *Kiribati* – CEACR, observation, 2011.

<sup>540</sup> *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2005.

<sup>541</sup> *Mauritius* – CEACR, observation, 2011.

221. In general terms, the Committee emphasizes the importance of enriching the content of collective bargaining in many countries and ensuring that it is not solely confined to addressing wage issues, which is still too often the case. It is in the interests of both workers and employers to negotiate together other aspects of industrial relations, including matters related to vocational training and promotion, dispute settlement machinery, measures to combat discrimination, issues relating to harassment at work and the reconciliation of family and working life.

#### *Level of collective bargaining*

222. Under the terms of Paragraph 4(1) of the Collective Bargaining Recommendation, 1981 (No. 163), “[m]easures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry or the regional or national levels”. On various occasions, ***the Committee has recalled the need to ensure that collective bargaining is possible at all levels, both at the national level,<sup>542</sup> and at the enterprise level. It must also be possible for federations and confederations.<sup>543</sup> Accordingly, legislation that unilaterally imposes a level of bargaining or makes it compulsory for bargaining to take place at a specific level raises problems of compatibility with the Convention.*** In practice, this issue is essentially a matter for the parties, who are in the best position to decide the most appropriate bargaining level including, if they so wish, by adopting a mixed system of framework agreements supplemented by local or enterprise level agreements.<sup>544</sup> The Committee has noted the introduction of the possibility of bargaining at all levels in *Argentina*.<sup>545</sup>

223. *Coordination of bargaining levels.* In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is coordination among these levels.<sup>546</sup> The Committee accepts both systems which leave it to collective agreements to determine the means for their coordination, as well as systems characterized by legal clauses distributing subjects between agreements, giving primacy to a certain level or adopting the criterion of the most favourable provision for workers. In the event of persistent disagreement concerning the level of bargaining, the Committee on Freedom of Association has considered that the best procedure is to provide for a system established by common agreement between the parties so as to take into account the interests and points of view of all concerned, rather than having recourse to a legal ruling to determine a specific level of bargaining. Nevertheless, if it is decided that this issue is to be determined by an independent body, the Committee on Freedom of Association has considered that in such cases the body concerned should be truly independent.<sup>547</sup>

<sup>542</sup> See, for example, *Albania* – CEACR, observation, 2010; and *Bosnia and Herzegovina* – CEACR, observation, 2010.

<sup>543</sup> See, for example, *Namibia* – CEACR, direct request, 2010; and *Uganda* – CEACR, observation, 2010.

<sup>544</sup> General Survey, 1994, para. 249.

<sup>545</sup> *Argentina* – CEACR, observation, 2002.

<sup>546</sup> Paragraph 4(2) of the Collective Bargaining Recommendation, 1981 (No. 163).

<sup>547</sup> Committee on Freedom of Association, Case No. 2375 (*Peru*), Report No. 338, para. 1226; and Case No. 2326 (*Australia*), Report No. 338, para. 457 (the Committee on Freedom of Association requested the Government to take the necessary measures to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law, decision of the administrative authority or the case law of the administrative labour authority).

## Recognition of organizations for the purposes of collective bargaining

### *Means of recognition*

224. By virtue of *Article 4* of the Convention, the right to collective bargaining rests with workers' organizations and employers and their organizations. Accordingly, recognition by an employer of the main unions represented in the enterprise or bargaining unit, or the most representative of these unions, constitutes the very basis for any procedure of collective bargaining at the enterprise level.<sup>548</sup> Consequently, ***unjustified refusal to recognize the most representative organizations, or the imposition of a high percentage requirement for the recognition of a collective bargaining agent, may impair the promotion and development of free and voluntary collective bargaining within the meaning of the Convention.***<sup>549</sup> The determination of the criteria for the designation of bargaining agents is therefore a central issue. Although the Committee allows a certain flexibility, it considers that, at the very least, in the event of controversy, the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity on the basis of two criteria: representativity and independence.<sup>550</sup>

### *Rights of minority unions*

225. In the view of the Committee, both systems of collective bargaining which grant exclusive rights to the most representative union, and systems under which several unions in an enterprise or a bargaining unit may conclude different collective agreements, are compatible with the principles of freedom of association. In its view, systems under which the collective agreements concluded by the representative organization only apply to the signatories and their members (and not to all workers), and the opposite practice under which all the workers in a bargaining unit are covered, are also compatible with these principles.

226. As the ILO Constitution itself enshrines the notion of "most representative" organizations (article 3, paragraph 5), the mere fact that legislation draws a distinction between the most representative trade union organizations and other organizations is not, in itself, reason for criticism. However, such a distinction should not result in the most representative organizations being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by governments or the appointment of delegates to international bodies.<sup>551</sup> In other words, this distinction should not have the effect of depriving trade unions which are not recognized as being among the most representative ("minority" organizations) of the essential means of defending the interests of their members, organizing their administration and activities and formulating their programmes. Accordingly, whatever the representativity threshold chosen, ***while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members.***

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<sup>548</sup> Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 953.

<sup>549</sup> Hungary – CEACR, observation, 2011.

<sup>550</sup> Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 967.

<sup>551</sup> General Survey, 1994, para. 239.

227. In this context, the Committee has noted with satisfaction the recognition of minority unions for the purposes of collective bargaining in *Fiji*<sup>552</sup> (since then, the situation in the country with regard to trade union rights has seriously deteriorated) and the legislation in *Swaziland*,<sup>553</sup> which now provides that where in an establishment employees are represented by more than two trade unions whose respective membership does not cover at least 50 per cent of the employees eligible to join the union, the employer shall grant collective bargaining rights to the unions to negotiate on behalf of their own members.

*Recognition procedure and criteria of representativity*

228. With regard to the criteria to be applied to determine the representative status of organizations for the purposes of bargaining, the Committee emphasizes the importance of ensuring, in case controversy should arise, that these criteria are objective, pre-established and precise so as to avoid any opportunity for partiality or abuse. Furthermore, such determination should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties, and without political interference. Governments should then be guided exclusively by the criterion of representativity in their relations with employers' and workers' organizations. Both systems of "compulsory" recognition of trade unions, whereby the employer, under certain conditions, must recognize the existing trade union(s), and those which envisage a system of "voluntary" recognition, are acceptable. Nevertheless, in the latter case, the public authorities are invited to encourage employers to recognize trade unions which can prove their representativity. Finally, recognition may also be "voluntary" when provided for in a bipartite or tripartite agreement, or where it constitutes a well-established practice.<sup>554</sup>

229. When national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, the Committee considers that certain safeguards should be attached, namely: (i) the certification to be made by an independent body; (ii) the representative organization to be chosen by a majority vote of the employees in the units concerned; (iii) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; and (iv) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed.<sup>555</sup> Finally, where the legislation provides that only registered trade unions may be recognized as bargaining agents, it should be ensured that the conditions required for registration are not excessive, as otherwise there would be a risk of the development of collective bargaining being seriously impaired.

230. In practice, the major difficulties encountered by the Committee in this field include the incompatibility of the criteria applied by States for the determination of the organizations to be engaged in collective bargaining with the requirements of precision and objectivity established by the Committee.<sup>556</sup> Other elements may also give rise to risks of partiality or abuse. These include, for example, systems which allow third parties

<sup>552</sup> *Fiji* – CEACR, observation, 2004.

<sup>553</sup> *Swaziland* – CEACR, observation, 2011.

<sup>554</sup> General Survey, 1994, paras 238–240.

<sup>555</sup> General Survey, 1994, para. 240.

<sup>556</sup> See, for example, *Ghana* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; and *Trinidad and Tobago* – CEACR, observation, 2011.

to raise objections during the procedure of recognition of a trade union;<sup>557</sup> which require the relevant union to undergo a “competency check” to ascertain whether the majority of the class of workers in the enterprise are members of the union;<sup>558</sup> or which cite by name in the legislation the organizations which are to form part of dialogue bodies, rather than referring in general terms to the “most representative” organizations.<sup>559</sup> In certain cases, the Committee requests the provision of information on any sanctions against employers which have opposed the directives of the authorities respecting recognition.<sup>560</sup>

231. *Disputes concerning representativity.* The settlement of disputes concerning representativity, when they arise, should preferably be achieved through a ballot. The Committee has recently recalled the importance of introducing into the legislation a formal requirement for the holding of ballots to determine trade union representativity in the context of a national situation in which the arbitrator could in such cases decide to conduct a ballot only when she or he considered it appropriate.<sup>561</sup> It has also requested an amendment to ensure that a ballot is possible when a trade union claims that it has more affiliated members in the bargaining unit than the other trade unions already established as bargaining agents.<sup>562</sup>

232. With regard to the average duration of the recognition procedure, the Committee considers that it must be “reasonable”. For example, it has considered that an average duration of nine months is excessively long.<sup>563</sup> It has also considered that the three-year time span that was required before an organization which had previously failed to obtain recognition as most representative, or a new organization, could seek a new decision, should be reduced to a more reasonable period.<sup>564</sup> In this context, it has noted that the legislation in certain countries requires the holding of a ballot within a certain period of the request being made by a trade union with a view to ensuring that the recognition procedure is not hampered by excessive delays, which may be caused by the wish of certain employers to identify trade union activists.<sup>565</sup>

### *Threshold of representativity*

233. As the issue of the representativity of bargaining agents is central to the recognition procedure, the determination of the threshold of representativity to be able to negotiate is consequently essential. Considering that the representativity threshold must be assessed on the basis of the specific characteristics of the industrial relations systems, the Committee does not impose a predetermined compulsory percentage for an organization to be considered “representative”. It however considers that the requirement of too high a percentage for representativity to be authorized to engage in collective bargaining may hamper the promotion and development of free and voluntary collective bargaining within the meaning of the Convention. In practice, the principal distinction to be made

<sup>557</sup> See, for example, *Cambodia* – CEACR, observation, 2011 (section 1 of Prakas No. 13 of 2004).

<sup>558</sup> See, for example, *Malaysia* – CEACR, observation, 2011.

<sup>559</sup> See, for example, *Portugal* – CEACR, observation, 2011 (section 9 of Act No. 108/91 respecting the Economic and Social Council).

<sup>560</sup> See, for example, *Malaysia* – CEACR, observation, 2011.

<sup>561</sup> *Lesotho* – CEACR, observation, 2011.

<sup>562</sup> See, for example, *Jamaica* – CEACR, observation, 2010.

<sup>563</sup> *Malaysia* – CEACR, observation, 2011.

<sup>564</sup> *Serbia* – CEACR, observation, 2011.

<sup>565</sup> *Sri Lanka* – CEACR, observation, 2011.

relates to the persons who are to be covered by the agreement: if the national system in force only authorizes organizations to negotiate on behalf of their own members, the issue of a representativity threshold does not arise. However, the situation is different when collective agreements negotiated by the organizations concerned are destined to be applied to all workers in a sector or establishment, and therefore more broadly than their own members.

**234. Fifty per cent.** *In practice, the legislation in many countries provides that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent.*<sup>566</sup> *In the view of the Committee, such a system may however raise problems of compatibility with the Convention, as it means that a representative union which fails to secure the absolute majority may thus be denied the possibility of bargaining. It therefore considers that under a system of the designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members.*

**235. Other thresholds.** Under other systems, representativity thresholds are established below or higher than 50 per cent. For example, thresholds are envisaged of around 30 per cent,<sup>567</sup> 40 per cent,<sup>568</sup> or between 10 and 20 per cent.<sup>569</sup> Such thresholds are not all compatible with the Convention. For example, the Committee considers that requiring the support of one third of the workers concerned, at the level of the branch or in a large enterprise, so that an organization can negotiate on their behalf<sup>570</sup> may be difficult to achieve and does not allow the promotion of collective bargaining within the meaning of *Article 4* of the Convention. Other countries require a representativity threshold that is even higher (up to 65 per cent of workers for a single union).<sup>571</sup> The Committee recalls that if no union in a specific negotiating unit meets the required percentage for representativity to be able to negotiate on behalf of all workers, minority unions should be able to negotiate, jointly or separately, on behalf of their own members.

<sup>566</sup> See, for example, *Belize* – CEACR, observation, 2010 (section 27(2) of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act); *Dominican Republic* – CEACR, observation, 2010 (sections 109 and 110 of the Labour Code); *Lesotho* – CEACR, observation, 2011 (section 198A(1)(b) of the Labour Code); *Namibia* – CEACR, direct request, 2011 (section 64(1) of the Labour Act); *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011 (section 57(2) of the Labour Relations Act); and *Turkey* – CEACR, observation, 2011 (section 12 of Act No. 2822).

<sup>567</sup> See, for example, *Bangladesh* – CEACR, observation, 2011 (section 202(15) of the Labour Act); *Botswana* – CEACR, observation, 2011 (section 48 of the Trade Union and Employers’ Organizations (Amendment) Act, read with section 32 of the Trade Disputes Act); *Gambia* – CEACR, observation, 2010 (section 130 of Labour Act No. 5 of 2007); and *Pakistan* – CEACR, observation, 2010 (section 24(1) of the Industrial Relations Act).

<sup>568</sup> See, for example, *Jamaica* – CEACR, observation, 2010 (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); and *Sri Lanka* – CEACR, observation, 2011 (Circular of 19 September 2000 and section 32A of the Industrial Disputes (Amendment) Act).

<sup>569</sup> See, for example, *The former Yugoslav Republic of Macedonia* – CEACR, observation, 2011 (sections 212 and 213 of the Law on Labour Relations).

<sup>570</sup> See, for example, *Bangladesh* – CEACR, observation, 2011.

<sup>571</sup> *Hungary* – CEACR, observation, 2011. Trade unions have to represent 65 per cent of the workforce (for a single union), a threshold which can hardly be achieved under a plural trade union structure, in order to be able to participate in collective bargaining (section 33(5) of the Labour Code), amend or renegotiate the collective agreement (section 37(1) and (2) of the Labour Code). The Government has indicated that it would be ready to discuss an amendment of this provision.

236. In this context, the Committee has noted with satisfaction, among other changes, the abolition of the requirement that the conclusion and signature of a collective agreement should be approved by two-thirds of the members of the union concerned in *Guatemala*;<sup>572</sup> and the fact that, in *Peru*,<sup>573</sup> the dual requirement of a majority of the number of workers and of the number of enterprises to be able to conclude a collective agreement covering a branch of activity or an occupation is now only required if the outcome of collective bargaining in a branch of activity or occupation is to achieve general coverage of all the workers in the sector (in cases where this dual requirement is not met, the outcome of the bargaining has effects that are limited to the workers who are members of the corresponding trade union organization(s)).

#### Grouping of trade unions

237. The Committee observes that certain countries envisage the grouping of trade unions with a view to achieving the required representativity threshold, in cases where it is not met by one organization on its own. These systems provide, for example, that trade unions may form a grouping so that the unions which have not obtained the required percentage may participate in collective bargaining;<sup>574</sup> or, if no trade union meets the representativity requirements, that trade unions may conclude an agreement on merger for that purpose.<sup>575</sup> The Committee considers that these systems are compatible with the Convention. However, certain countries do not grant trade unions the possibility of forming a grouping for the purposes of bargaining.<sup>576</sup>

#### Representativity of employers' organizations

238. With regard to the issue of the representativity threshold required for the recognition of employers' organizations, the Committee has considered, for example, that the requirement for an employers' association to represent at least 10 per cent of employers to be able to engage in collective bargaining is particularly high, especially for negotiations at the sectoral or national level.<sup>577</sup> It has also requested a considerable reduction or the repeal of the minimum requirements for the definition of an "authorized association of employers" in a case in which the members of the association had to employ a minimum of 25 per cent of employees in the country and to represent a minimum of 25 per cent of the gross domestic product, so as to enable employers and employers' associations to conclude collective agreements in the manner that they consider most appropriate.<sup>578</sup>

#### *Negotiation with representatives of non-unionized workers*

239. Since, under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and with employers and their organizations, collective bargaining with representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. Indeed, the Committee considers that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may

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<sup>572</sup> *Guatemala* – CEACR, observation, 2002.

<sup>573</sup> *Peru* – CEACR, observation, 2005.

<sup>574</sup> *Morocco* – CEACR, direct request, 2011.

<sup>575</sup> *Montenegro* – CEACR, direct request, 2011.

<sup>576</sup> See, for example, *Hungary* – CEACR, observation, 2011.

<sup>577</sup> *Serbia* – CEACR, observation, 2011 (section 222 of the Labour Law).

<sup>578</sup> *Montenegro* – CEACR, direct request, 2011 (article 161 of the Labour Law).

undermine the principle of the promotion of collective bargaining set out in the Convention. It is in this spirit that *Article 5* of the Workers' Representatives Convention, 1971 (No. 135), provides that, where there exist in the same undertaking "both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives". *Article 3(2)* of Convention No. 154 is drawn up in similar terms and the Collective Agreements Recommendation, 1951 (No. 91), establishes that the term "collective agreements" means "all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other."

240. In practice, the Committee has recalled on several occasions that, where there exists a representative trade union and it is active within the enterprise or branch of activity concerned, the authorization for other workers' representatives to bargain collectively not only weakens the position of the trade union, but also undermines ILO rights and principles on collective bargaining. Despite this principle, several States continue to promote or allow non-unionized workers' representatives to conclude collective agreements,<sup>579</sup> even where there exists in the sector or enterprise concerned a trade union that is more able to guarantee the independence of its positions in relation to the employer. Recalling the principle that the use of machinery for voluntary negotiation has to be encouraged, the Committee considers that if, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers, there would be a serious risk of undermining the negotiating capacity of the trade union and giving rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union.<sup>580</sup> Emphasizing that collective bargaining is a fundamental right recognized in many national constitutions, and therefore accorded a high legal ranking, ***the Committee calls on governments to take measures to prevent direct agreements with non-unionized workers being used for anti-union purposes***, as is still the case in certain countries. It has accordingly criticized, for example, the clear disproportion between the high number of direct agreements concluded with non-unionized workers, and the low number of collective agreements with trade unions.<sup>581</sup> Finally, the Committee has noted with satisfaction the amendment to the legislation in *Panama*<sup>582</sup> under the terms of which the Ministry of Labour will no longer entertain claims submitted by a non-organized group of workers.

<sup>579</sup> See, for example, *Central African Republic* – CEACR, observation, 2010 (sections 197 and 198 of the new Labour Code); *Georgia* – CEACR, observation, 2010 (sections 41 to 43 of the Labour Code); *Kazakhstan* – CEACR, observation, 2011 (section 282(2) of the Labour Code); *Kyrgyzstan* – CEACR, direct request, 2010; *Russian Federation* – CEACR, observation, 2011 (section 31 of the Labour Code); *Tajikistan* – CEACR, direct request, 2010 (section 17 of the Labour Code); and *Uzbekistan* – CEACR, observation, 2011 (sections 21(1), 23(1), 31, 35, 36, 48, 49 and 59 of the Labour Code).

<sup>580</sup> *Georgia* – CEACR, observation, 2010.

<sup>581</sup> See, for example, *Colombia* – CEACR, observation, 2010; and *Costa Rica* – CEACR, observation, 2010.

<sup>582</sup> *Panama* – CEACR, observation, 2010.



## Machinery and procedures to facilitate and promote collective bargaining

241. The Collective Bargaining Recommendation, 1981 (No. 163), proposes a series of means to facilitate and promote collective bargaining, in accordance with *Article 4* of Convention No. 98. These include measures with a view to: (i) facilitating the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organizations; (ii) establishing procedures for the recognition of the most representative organizations; (iii) ensuring that collective bargaining is possible at any level whatsoever; (iv) enabling negotiators to obtain appropriate training and the parties to have access to the information required for meaningful negotiations (such as information on the economic situation of the enterprise, on condition, however, that the objectivity and confidentiality of such financial data is subject to reasonable guarantees); and (v) taking measures adapted to national conditions so that procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves.<sup>583</sup> Moreover, the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), encourages the development of voluntary conciliation and arbitration machinery, one of the principal characteristics of which should be the joint nature of the machinery, voluntary recourse to the procedures, which should be expeditious and free of charge; and calls on the parties to abstain from strikes and lockouts while voluntary conciliation and arbitration procedures are in progress.

242. In practice, the systems in several countries provide for the setting up of joint bodies (within the enterprise or the branch of activity, or at the central or inter-occupational level), within which collective agreements must be, or are generally concluded. The legislation in certain countries establishes different schemes for the private and public sectors, with a view to taking into account more effectively the specific characteristics of the latter. Others provide for the establishment of specialized institutions.<sup>584</sup> Whatever the type of machinery used, the Committee is of the view that its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement under the best possible conditions.

243. With reference to the bodies entrusted with resolving disputes, it is the view of the Committee that they should be independent and that recourse to them should be voluntary. Experience shows that the mere intervention of a neutral, independent third party, in which the parties have confidence, is often enough to break a stalemate which the parties would be unable to resolve by themselves. The Committee also recalls that the promotion of collective bargaining requires measures to address improper practices in collective bargaining, such as proven bad faith, unwarranted delays in the bargaining process and failure to comply with the agreements concluded.<sup>585</sup> It also implies the holding of full and frank consultations with the employers' and workers' organizations concerned on a regular basis on the revision of collective bargaining machinery, in accordance with the principle of the autonomy of the parties and in light of the long-ranging implications of such revision for the standard of living of workers,<sup>586</sup> taking into

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<sup>583</sup> General Survey, 1994, para. 247.

<sup>584</sup> General Survey, 1994, paras 244–247.

<sup>585</sup> The Committee emphasized this point in an observation concerning Switzerland, without however concluding that a problem existed in this respect in the country (*Switzerland* – CEACR, observation, 2011).

<sup>586</sup> *Greece* – CEACR, observation, 2011.

account the importance of ensuring that the rules of the system are sustainable, which implies a broad degree of acceptance by the parties.

244. In practice, several positive measures for the promotion of collective bargaining have been welcomed by the Committee in recent years. For example, it has welcomed the training and information activities for the social partners undertaken in *Burkina Faso*; <sup>587</sup> the training and awareness-raising activities on bargaining techniques for staff delegates, trade union delegates and other workers in *Madagascar*; <sup>588</sup> the prohibition of unfair practices and the guarantee of the right of access to the necessary information in all sectors, including EPZs, in *Mauritius*; <sup>589</sup> the measures to raise awareness and provide information on the applicable legislation and to support collective bargaining procedures in *Mozambique*; <sup>590</sup> the adoption of provisions to ensure that there are no financial penalties or incentives linked to undue restrictions on collective bargaining in *Australia*; <sup>591</sup> the establishment of new labour tribunals to resolve the slowness of the justice system in *Guatemala*; <sup>592</sup> and measures to limit the cost of the bargaining procedure in *Australia* <sup>593</sup> and *Cape Verde*. <sup>594</sup>

### Extension of collective agreements

245. The Collective Agreements Recommendation, 1951 (No. 91), indicates that, where appropriate, having regard to established collective bargaining practice, “measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement.” <sup>595</sup> National laws or regulations may make the extension of the collective agreement subject to the following, among other, conditions: (i) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (ii) that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and (iii) that the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their observations. <sup>596</sup> The Committee considers that the extension of collective agreements is not contrary to the principle of voluntary collective bargaining and is not in violation of Convention No. 98. It observes that such measures are envisaged in several countries.

<sup>587</sup> *Burkina Faso* – CEACR, observation, 2011.

<sup>588</sup> *Madagascar* – CEACR, observation, 2011.

<sup>589</sup> *Mauritius* – CEACR, observation, 2011.

<sup>590</sup> *Mozambique* – CEACR, direct request, 2011.

<sup>591</sup> *Australia* – CEACR, observation, 2010.

<sup>592</sup> *Guatemala* – CEACR, observation, 2010.

<sup>593</sup> *Australia* – CEACR, direct request, 2010.

<sup>594</sup> *Cape Verde* – CEACR, observation, 2011.

<sup>595</sup> Para. 5(1).

<sup>596</sup> Para. 5(2).

## Compulsory arbitration

246. The imposition of arbitration with compulsory effects, either directly under the law, or by administrative decision or at the initiative of one of the parties, in cases where the parties have not reached agreement, or following a certain number of days of a strike, is one of the most radical forms of intervention by the authorities in collective bargaining. Before addressing the issue, certain preliminary clarifications are required. First, a distinction has to be made between *rights disputes*, which concern the application or the interpretation of a collective agreement (the settlement of such disputes may be referred to an independent authority), and *interest disputes*, which relate to the establishment of a collective agreement or to the modification, through collective bargaining, of wages and other conditions of work contained in an existing collective agreement. The latter type of dispute is addressed here. Furthermore, the term “compulsory arbitration” itself gives rise to a certain confusion. If the term refers to the compulsory effects of an arbitration procedure resorted to voluntarily by the parties, this does not raise difficulties in the Committee’s opinion, since the parties should normally be deemed to accept being bound by the decision of the arbitrator or arbitration board they have freely chosen. The real problem arises in the case of compulsory arbitration which the authorities may impose in an interest dispute at the request of one party, or at their own initiative, the effects of which are compulsory for the parties.<sup>597</sup>

247. *Compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee’s opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. However, arbitration accepted by both parties (voluntary) is always legitimate.* In all cases, the Committee considers that, before imposing arbitration, it is highly advisable that the parties be given every opportunity to bargain collectively, during a sufficient period, with the help of independent mediation.

248. In practice, the main difficulties encountered by the Committee relate to the possibility that exists in certain countries to impose arbitration at the request of one of the parties only,<sup>598</sup> a third party<sup>599</sup> or an authority,<sup>600</sup> particularly in services that are not essential in the strict sense of the term, or when considerations are imposed relating to the protection of certain interests. Depending on the system, the public administrative or

<sup>597</sup> General Survey, 1994, paras 254–256.

<sup>598</sup> See, for example, *Indonesia* – CEACR, observation, 2010; *Republic of Moldova* – CEACR, observation, 2011; *Uganda* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011. Furthermore, in its report under article 19 of the Constitution, the Government of the United States indicates that the Federal Labor Relations Authority performs functions for federal employee labour organizations, including the resolution of complaints of unfair labour practices and disputes over the scope of collective bargaining negotiations. In addition, the Federal Mediation and Conciliation Service has authority to help resolve bargaining disputes between federal agencies and labour organizations. If the dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The FSIP has authority to take whatever action is necessary to resolve the impasse, including direct assistance or binding arbitration.

<sup>599</sup> See, for example, *Portugal* – CEACR, observation, 2011.

<sup>600</sup> See, for example, *Kuwait* – CEACR, direct request, 2011; *Malaysia* – CEACR, observation, 2011; and *Mauritania* – CEACR, direct request, 2011.

legislative authorities, either intervening at their own initiative or at the request of one of the parties, may be authorized either to endeavour to settle the dispute themselves, or to submit the dispute to specific bodies (a conciliation board or an arbitration body), or to refer the dispute to the judicial authorities. In the Committee's opinion, all of these systems raise problems of compatibility with the Convention.<sup>601</sup>

249. In contrast, certain countries provide that, once the conciliation attempt between the parties to the dispute has failed, the dispute is transferred to a specific independent body entrusted with issuing a report or recommendations which, after a certain period, become enforceable if the parties to the dispute have not challenged them.<sup>602</sup> The Committee considers that this type of provision may be compatible with the Convention, on condition, however, that the period referred to above is reasonable.

250. *Conclusion of a first collective agreement.* While the Committee considers that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, it can envisage an exception in the case of provisions allowing workers' organizations to initiate such a procedure for the conclusion of a first collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing sound industrial relations, these types of provisions may be considered to constitute machinery and procedures intended to promote collective bargaining. The Committee has noted in this respect that, in *Portugal*,<sup>603</sup> where protracted and fruitless negotiations have ended in a stalemate deemed impossible to resolve, recourse to compulsory arbitration would be limited to the negotiation of a first collective agreement.

<sup>601</sup> Several countries have been requested to amend their legislation on these points: see, for example, *Angola* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Cuba* – CEACR, observation, 2010; *Egypt* – CEACR, observation, 2011; *Iceland* – CEACR, observation, 2010; *Jamaica* – CEACR, observation, 2010; *Lebanon* – CEACR, direct request, 2011; *Mozambique* – CEACR, direct request, 2011; *Nepal* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Russian Federation* – CEACR, observation, 2011; *Rwanda* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Sudan* – CEACR, observation, 2011; *United Republic of Tanzania* – CEACR, observation, 2011; *Togo* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>602</sup> See, for example, sections 242–248 of the Labour Code of the *Congo*.

<sup>603</sup> *Portugal* – CEACR, observation, 2011.

## Part III. Forced labour

### Chapter 1

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#### Introduction

251. Freedom from forced or compulsory labour is pivotal for the attainment of social justice and its nexus with rights and freedoms. It is advanced by the right to freedom of association and collective bargaining already examined. It is of great relevance to the protection of vulnerable groups, such as children, from exploitation, enslavement and being used as a commodity. Its universality is anchored in the principle of non-discrimination pertaining to all.

252. Freedom from forced or compulsory labour is a cornerstone of the decent work concept and one of the most basic human rights coming within the competence of the ILO. The two fundamental ILO Conventions on the subject – Conventions Nos 29 and 105 – are the most widely ratified of all the ILO instruments.<sup>604</sup> Principles embodied in these Conventions have found universal acceptance and endorsement and have become an inalienable part of the core fundamental rights of human beings. They have been incorporated in various international instruments, both universal and regional.<sup>605</sup> ***The prohibition of the use of forced or compulsory labour in all its forms is considered now as a peremptory norm of international law on human rights; it is of an absolutely binding nature from which no exception is permitted.***

253. Conventions Nos 29 and 105 aim at guaranteeing to all human beings freedom from forced labour, irrespective of the nature of the work or the sector of activity in which it may be performed. The two instruments effectively supplement each other, and their concurrent application should contribute to the complete elimination of forced or compulsory labour in all its forms.

254. Since the last General Survey on the subject in 2007,<sup>606</sup> the Committee has noted with satisfaction a number of cases of progress, which cover measures taken, both in legislation and in practice, to ensure better observance of the Conventions in various countries of the world. The Committee has noted, in particular, the repeal or amendment of certain legislative provisions allowing the exaction of forced or compulsory labour for purposes of production or service. It has also noted the repeal or amendment of provisions authorizing the imposition of forced or compulsory labour as a means of

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<sup>604</sup> See paras 908 et seq. below.

<sup>605</sup> See, for example, Article 8(1)(a),(b) and (c) of the *International Covenant on Civil and Political Rights* (1966). For other universal and regional instruments, see *Eradication of forced labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), the Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 96th Session, Geneva, 2007.

<sup>606</sup> *ibid.*

political coercion or education, as a punishment for holding or expressing political views, as a punishment for various breaches of labour discipline or for having participated in strikes.

255. However, despite the universal condemnation of forced labour and the adoption of constitutional and legislative provisions abolishing it, the problem of forced or compulsory labour continues to exist in a number of countries and many people around the world are still subjected to it. The persistence of forced labour is an affront to human dignity and the antithesis of decent work.

256. In its 2007 General Survey, the Committee observed that there are instances of *vestiges of slavery* and other *slavery-like practices* which still survive in certain countries, sometimes connected with abductions of men, women and children in the context of armed conflicts. There still remain widespread practices of *debt bondage* and *trafficking in persons* for the purposes of sexual and labour exploitation, which may involve not only adults, but also children. In numerous countries, *domestic workers* are trapped in situations of forced labour, and in many cases they are restrained from leaving the employers' homes through threats or violence. The Committee further noted that forced labour today also affects considerable numbers of *migrant workers* who are transported away from their countries or communities of origin. At the same time, there are still instances of various forms of forced or compulsory labour imposed directly by the State, in violation of international standards, either for purposes of production or service (such as various kinds of national service obligations) or as a punishment (e.g. for expressing certain political views or for participating in strikes). The Committee referred in this connection to the 2005 Global Report on forced labour under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, which stated that over the past few years there has been a greater realization that forced labour in its different forms can pervade all societies, whether in developing or industrialized countries, and is by no means limited to a few pockets around the globe.<sup>607</sup>

257. In its 2007 General Survey, while examining the problems of the application of the forced labour Conventions, the Committee identified certain new trends and relatively new issues that have emerged in the past decades. Thus, the Committee drew attention to the problem of *trafficking in persons* for forced labour purposes; it also noted a trend towards a *privatization of prisons and work of prisoners for private companies*; the adoption in many countries of provisions introducing a new *penal sanction of community work* as an alternative to imprisonment; the adoption in some countries of policies imposing *compulsory work as a condition for the receipt of unemployment insurance benefits*; and, finally, the Committee examined certain situations in which a *requirement to work overtime* could represent an infringement of Convention No. 29.

258. The present General Survey further examines some of these trends, analysing progress in the application of the forced labour Conventions over the past five years and focusing on certain thematic issues, including the vulnerability to forced and compulsory labour of the most vulnerable groups, such as *migrant workers*, *domestic workers*, *indigenous peoples*, *informal sector workers*, *women and children*, both in the context of human trafficking and in other forced labour situations. Forced labour is very often linked to poverty and discrimination, particularly if exacted in the private sector, and even more often so in the informal economy. According to the latest Global Report on forced labour under the follow-up to the ILO Declaration on Fundamental Principles and

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<sup>607</sup> A *global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 93rd Session, Geneva, 2005, para. 11.

Rights at Work (2009), ILO research has consistently shown that the manipulation of credit and debt, either by employers or by recruiting agents, is still a key factor that traps vulnerable workers in forced labour situations. Poor peasants and indigenous peoples may be induced into indebtedness through accepting relatively small but cumulative loans or wage advances from employers or recruiters at a time of scarcity. Alternatively, aspirant migrants may have to pay very large amounts to the agents who help them secure work overseas and facilitate their travel, borrowing from moneylenders and other sources in order to meet these costs.<sup>608</sup>

259. This General Survey also examines the progress achieved over the past five years in the elimination of forced or compulsory labour as a punishment for holding or expressing political views, or as a punishment for various breaches of labour discipline or for having participated in strikes.

260. Today, forced or compulsory labour is universally banned. Guarantees of freedom of labour are generally embodied in national constitutions<sup>609</sup> and often made effective by provisions of criminal legislation punishing violations of individual liberties, through which individuals may seek protection against unlawful interference with their freedom, whether by private persons or public authorities. Specific prohibitions of forced labour have also been incorporated in the labour codes or general employment legislation of many countries. Thus, in many ratifying States national legislation contains a definition of forced or compulsory labour drawn upon the wording of Convention No. 29, which frequently follows very closely the terms of the definition contained in this instrument.<sup>610</sup> When applied in conjunction with the relevant Criminal Code provisions, constitutional and labour legislation provisions prohibiting forced or compulsory labour seem on the whole sufficient to protect individuals from the illegal imposition of forced labour. However, any such provisions may become ineffective where forced or compulsory labour is imposed by the legislation itself.<sup>611</sup>

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<sup>608</sup> *The cost of coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 98th Session, Geneva, 2009, para. 40.

<sup>609</sup> See para. 10 above.

<sup>610</sup> General Survey, 2007, para. 67 and footnote 141.

<sup>611</sup> See para. 266 below.

## Chapter 2

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### Scope of the Conventions and methods of application

#### Scope

261. *Conventions Nos 29 and 105 contain no provisions limiting the scope of their application by excluding certain categories of workers. Intended to guarantee respect for certain fundamental human rights, both Conventions are of general application and are designed to protect the entire population of the countries which have ratified them.*

262. Article 2(1) of Convention No. 29 defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>612</sup> It follows from the words “all work or service” that the Convention applies to all types of work, service and employment, regardless of the industry or sector within which it is found, including the informal sector. The words “any person” refer to all human beings – adults and children, nationals and non-nationals, including migrants in irregular situations. The forced labour Conventions are therefore applicable to *all workers in the public and private sectors, migrant workers, domestic workers and workers in the informal economy*. Exceptions from the definition of forced labour in Convention No. 29 are considered below.<sup>613</sup>

263. With regard, more particularly, to the scope of Convention No. 105, it should be borne in mind that, despite the fact that its provisions are closely interlinked with civil liberties, this instrument does not deal with freedom of thought or expression or other civil liberties as such, nor does it regulate questions of labour discipline or strikes in general. Its purpose is to ensure that no form of forced or compulsory labour is used in the circumstances specified in the Convention. Where the penalties applicable to offences in relation to the expression of political views, labour discipline or participation in strikes do not involve any obligation to perform labour, the substantive provisions governing these offences are outside the scope of the Convention.

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<sup>612</sup> For the complete analysis of the definition of forced or compulsory labour given in the Convention and the exceptions from its scope, see Chapter 3 below.

<sup>613</sup> See paras 273–281, below.



## Methods of application: Constitutional and legislative provisions, judicial decisions

264. As indicated above,<sup>614</sup> guarantees of freedom of labour are generally embodied in *national constitutions, labour codes or general employment legislation* and often made effective by provisions of *criminal legislation* punishing violations of individual liberties, through which individuals may seek protection against unlawful interference with their freedom. However, assessment of the situation concerning the implementation of the forced labour Conventions requires, in addition to examining the constitutional and basic labour law provisions, the examination of a wide range of other national laws and regulations, with a view to ascertaining that no form of forced or compulsory labour falling within the scope of the Conventions could be imposed as a result of their practical application: *penal codes and various criminal laws, anti-trafficking laws, legislation governing civil and political freedoms (including laws on the press and other media, political parties, public meetings and assemblies, etc.), laws on indigenous peoples, prison laws and regulations, laws governing compulsory military service, laws governing emergency situations, etc.*

265. Moreover, since it is not always possible to appreciate the scope of legislation simply by examining the texts, it is also necessary to carefully study and assess the way in which these legislative texts are actually implemented in practice – particularly the court decisions which define or illustrate their scope. Only then can it be ascertained whether the standards laid down in the Conventions are really being complied with. Thus, judicial decisions play an important role in the implementation of the forced labour Conventions.

## Difficulties in the application of the Conventions

266. Despite the tangible progress that has been made over the past decades in eliminating forced or compulsory labour, the Committee notes that the effective application of the forced labour Conventions continues to present problems in certain countries. *There are still instances of various forms of forced or compulsory labour imposed directly by the State, in violation of international standards, either for the purposes of production or service (such as various kinds of national service obligations, e.g. the use of conscripts for non-military purposes, powers to call up labour outside emergency circumstances, or restrictions on the freedom of workers to terminate employment, in particular in the public service and essential services), or as a punishment (e.g. where convicted persons are hired to or placed at the disposal of private entities). There are also cases where freedom of expression still remains subject to restrictions enforced by sanctions involving compulsory labour. Similar sanctions are applicable for various breaches of labour discipline by public servants or seafarers, or for participation in strikes.* These various forms of forced or compulsory labour will be considered in detail in Chapters 3 and 4. The Committee has requested the governments concerned to repeal or amend the provisions in question in order to bring the legislation into conformity with the Conventions.

267. *The Committee also observes that, despite the adoption of the constitutional and legislative provisions prohibiting forced labour, various problems of application in practice still exist in a number of countries. Thus, there are instances of vestiges of slavery and other slavery-like practices which still survive in certain countries and regions, sometimes connected with abductions of men, women and children in the context of armed conflicts, as well as the entrapment of people through various forms*

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<sup>614</sup> See para. 260 above.

*of debt bondage and trafficking in persons for the purposes of sexual and labour exploitation, which may involve both adults and children. Members of the most vulnerable groups (such as, migrant workers, domestic workers, agricultural workers, informal sector workers, members of indigenous communities) are the most affected.*

These problems of the application of the Conventions in practice are also examined in detail in Chapters 3 and 4. The Committee has requested the governments concerned to take all the measures necessary to identify, release and rehabilitate the victims of the illegal exaction of forced labour (such as bonded labourers and victims of trafficking or slavery-like practices) and to punish those responsible through the strengthening of labour inspection and law enforcement machinery, and by imposing adequate penal sanctions, as required by *Article 25* of Convention No. 29.

## Chapter 3

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

#### Definition of forced or compulsory labour

268. For the purposes of Convention No. 29, the term “forced or compulsory labour” is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (*Article 2(1) of the Convention*). The three elements of this definition (*work or service*, *menace of any penalty* and *voluntary offer*) are considered below.

269. *Work or service* should be distinguished from “education or training”. As the Committee observed in its 2007 General Survey, the principle of compulsory education is recognized in various international instruments as a means of securing the right to education, and it is also provided for in ILO instruments.<sup>615</sup> The Committee has also pointed out that a compulsory scheme of vocational training, by analogy with and considered as an extension of compulsory general education, does not constitute compulsory work or service within the meaning of Convention No. 29.<sup>616</sup> As indicated above, *all work or service* includes all types of work, service and employment, regardless of the industry or sector within which it is found, including the informal sector.<sup>617</sup>

270. *Menace of any penalty* should be understood in a very broad sense: it covers penal sanctions, as well as various forms of coercion, such as physical violence, psychological coercion, retention of identity documents, etc. The penalty here in question might also take the form of a loss of rights or privileges.<sup>618</sup>

271. *Voluntary offer* refers to the freely given and informed consent of workers to enter into an employment relationship and to their freedom to leave their employment at any time (e.g. with notice of reasonable length). An external constraint or indirect coercion interfering with a worker’s freedom to “offer himself voluntarily” may result not only from an act of the authorities, such as a statutory instrument, but also from an employer’s practice, for example where *migrant workers* are induced by deceit or false promises, or forced to remain at the disposal of an employer; such practices represent a clear violation of the Convention.<sup>619</sup> With regard to the possibility to revoke freely given consent to undertake work or service, the Committee has considered, in connection with freedom of workers to leave their employment that, even in cases where employment is

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<sup>615</sup> General Survey, 2007, para. 36.

<sup>616</sup> *ibid.*

<sup>617</sup> See para. 262 above.

<sup>618</sup> General Survey, 2007, para. 37.

<sup>619</sup> *ibid.*, para. 39.

originally the result of a freely concluded agreement, the right of workers to free choice of employment remains inalienable. Accordingly, the effect of statutory provisions preventing termination of employment of indefinite duration (or very long duration) upon notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Convention.<sup>620</sup> In relation to child labour, the question arises of whether, and under what circumstances, a minor can be considered to have offered himself or herself “voluntarily” for work or service and whether the consent of the parents is required and may be considered sufficient. Most national legislation has established a minimum age limit for concluding a labour contract, which may coincide with the age at which compulsory school attendance ends. However, employment that is likely to jeopardize health, safety or morals is generally prohibited for persons under 18 years of age, in conformity with the relevant ILO Conventions,<sup>621</sup> so that neither the children nor those having parental authority over them may give valid consent to their admission to such employment.<sup>622</sup>

*272. The Committee emphasizes the fundamental relevance and value of the concept of the prohibition of forced labour in all its forms, which is based on the definition provided for in the Convention. When adopting the Convention, ILO constituents opted for a broad definition of the term “forced labour” – comprising the three elements examined above – rather than enumerating a list of prohibited practices. The use of a broad definition has enabled the ILO supervisory bodies to address traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking. Furthermore, forced labour imposed not only by private entities but also by state authorities is covered by this definition. Ratifying States are therefore required to develop a comprehensive legal and policy framework to combat forced labour in all its forms.*

## Exceptions from the definition of forced labour

273. For the purposes of the Convention, certain forms of compulsory work or service, which would otherwise have fallen under the general definition of “forced or compulsory labour”, are expressly excluded from its scope (*Article 2(2)* of the Convention). These exceptions are subject to the observance of certain conditions which define their limits. The Committee is therefore obliged to verify in all cases where ratifying States have recourse to the excepted categories of compulsory work or service that the conditions established by the Convention are observed.

### Compulsory military service

274. Compulsory military service is excluded from the scope of the Convention, provided that it is used “for work of a purely military character” (*Article 2(2)(a)*). This condition is aimed specifically at preventing the call-up of conscripts for public works and has its corollary in *Article 1(b)* of Convention No. 105, which prohibits the use of forced or compulsory labour “as a method of mobilizing and using labour for purposes of economic development”.<sup>623</sup> In this connection, the Committee has considered that,

<sup>620</sup> *ibid.*, para. 40.

<sup>621</sup> Minimum Age Convention, 1973 (No. 138), *Art. 3(1)*; Worst Forms of Child Labour Convention, 1999 (No. 182), *Arts 1, 2 and 3(d)*.

<sup>622</sup> General Survey, 2007, para. 41.

<sup>623</sup> See para. 308 below.

when a choice is given under the national legislation between military service proper and non-military work, the existence of such a choice does not in itself exclude the application of the Convention, otherwise a call-up under military service laws could be used for engagement in work of a non-military character. As the services in question, whether non-military or purely military, result from compulsory call-up, the choice is not between voluntary work and compulsory service, but between two forms of compulsory service, one of which is excluded from the scope of the Convention, while the other is not.<sup>624</sup>

275. There are, however, specific circumstances in which a non-military activity performed within the framework of compulsory military service or as an alternative to such service remains outside the scope of Convention No. 29. First of all, it goes without saying that conscripts may be called up to work in cases of emergency, like any other citizens, under *Article 2(2)(d)* of the Convention. Secondly, it was accepted by the Conference during the preparation of the Convention that conscripts performing their service in engineering or similar units may be made to join in the building of roads and bridges as a part of their military training. Lastly, while the Convention does not mention specifically the issue of conscientious objectors, the Committee has considered that the exemption of conscientious objectors from compulsory military service, coupled with an obligation to perform an alternative service, is a privilege granted to individuals on request, in acknowledgement of freedom of conscience.<sup>625</sup> In examining whether it is a privilege granted to individuals on their request or whether, on the contrary, national service is being used as a means of pursuing economic and social development through the use of compulsory labour, due account should be taken of the number of persons concerned and the conditions in which they make their choice.

276. It should be noted that the provisions of the Convention relating to compulsory military service do not apply to career military personnel. The Convention therefore does not deal with the use of persons serving in the armed forces on a voluntary basis and consequently does not prohibit the performance of non-military work by these persons.

### Normal civic obligations

277. The Convention exempts from its provisions “any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country” (*Article 2(2)(b)*). Three kinds of such “normal civic obligations” are specifically mentioned in the Convention as exceptions from its scope, namely: compulsory military service, work or service in cases of emergency and “minor communal services”.<sup>626</sup> Other examples of “normal civic obligations” could be compulsory jury service and the duty to assist a person in danger.<sup>627</sup> The exception of “normal civic obligations” should be understood in a very restrictive way; it must be read in the light of the other provisions of the Convention and cannot be invoked to justify recourse to forms of compulsory service which are contrary to the letter and the spirit of the Convention. Thus, it is not possible to consider as “normal civic obligations”, within the meaning of the Convention, work undertaken for public purposes, such as compulsory public works of general importance or compulsory national development service, which is prohibited by the Convention.<sup>628</sup> The use of such work is also prohibited by Convention No. 105,

<sup>624</sup> General Survey, 2007, para. 45.

<sup>625</sup> *ibid.*, para. 44.

<sup>626</sup> See paras 274–276 above and paras 280–281 below.

<sup>627</sup> General Survey, 2007, para. 47.

in so far as it constitutes “a method of mobilizing and using labour for purposes of economic development”.

### Compulsory labour of convicted persons

278. Compulsory labour of convicted persons is excluded from the scope of the Convention, provided that it is “carried out under the supervision and control of a public authority” and that such persons are not “hired to or placed at the disposal of private individuals, companies or associations” (*Article 2(2)(c)*). Compulsory labour excluded under this provision may take the form of compulsory prison labour or labour exacted following the imposition of other kinds of penalty, such as a sentence of community work. The two conditions set forth in *Article 2(2)(c)*, are equally important and apply cumulatively: the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the government from fulfilling the second condition, namely that the person is not hired to or placed at the disposal of private individuals, companies or associations. If either of the two conditions is not observed, the situation is not excluded from the scope of the Convention, and compulsory labour exacted from convicted persons under these circumstances is prohibited in virtue of *Article 1(1)* of the Convention.<sup>629</sup>

279. However, the Committee has considered that, provided the necessary safeguards exist to ensure that the persons concerned offer themselves *voluntarily*, by giving their free and informed consent and without being subjected to pressure or the menace of any penalty, such employment does not fall within the scope of the Convention. Since such formal consent is given in a context of lack of freedom with limited options, it should be in writing. Further, this authentication of voluntariness should be examined through supervision by the public authority. It could also include scrutiny of voluntariness by the courts. The question thus arises as to whether prisoners, notwithstanding their captive circumstances, can be in a situation of freely consented labour, for which they have offered themselves voluntarily and without the menace of any penalty, including the loss of a right or a privilege (advantage), so that their work does not come under the definition of forced or compulsory labour given in *Article 2(1)* of the Convention. If that is the case, the conditions laid down in *Article 2(2)(c)* for compulsory prison labour do not apply, and private employment of prisoners would be compatible with the Convention. Taking into account that, in the absence of an employment contract and outside the scope of the labour law, it seems difficult or even impossible to exactly replicate the conditions of a free working relationship, particularly in the prison context, the Committee has considered that, in assessing whether convict labour for private companies is voluntary, conditions approximating a free labour relationship are the most reliable indicator of the voluntariness of labour.<sup>630</sup>

### Cases of emergency

280. The Convention exempts from its provisions “any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population”

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<sup>628</sup> *ibid.*

<sup>629</sup> *ibid.*, paras 53–55.

<sup>630</sup> *ibid.*, paras 59–60 and 114–122. The issue of work of prisoners for private companies is also dealt with in para. 291 below.

(*Article 2(2)(d)*). This exception applies in restricted circumstances where a calamity or threatened calamity endangers the existence or well-being of the whole or part of the population. The enumeration of examples in the Convention is an indication of a restrictive character as to the nature of cases of emergency and helps to clarify the concept of emergency for the purposes of the Convention, which involves a sudden, unforeseen happening calling for instant countermeasures. In order to respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency. Moreover, the duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation. While examining reports provided by countries which have ratified the Convention, the Committee is therefore concerned to satisfy itself that both the law and the practice of countries with regard to the exaction of work or service in cases of emergency remain within these limits. In order to avoid any uncertainty as to the scope of national provisions or their compatibility with the Convention, it should be clear from the legislation itself that recourse to compulsory labour as an emergency measure is confined within the limits indicated above.<sup>631</sup>

### Minor communal services

281. Minor communal services are excluded from the scope of the Convention, provided they are “performed by the members of the community in the direct interest of the said community”, and “can therefore be considered as normal civic obligations incumbent upon the members of the community”, subject to a condition “that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services” (*Article 2(2)(e)*). The Committee has drawn attention to the criteria which determine the limits of this exception and serve to distinguish it from other forms of compulsory services which, under the terms of the Convention, must be abolished (such as forced labour for general or local public works). These criteria are as follows:

- the services must be “minor services”, that is to say relate primarily to maintenance work and, in exceptional cases, to the erection of certain buildings intended to improve the social conditions of the population of the community itself (a small school, a medical consultation and treatment room, etc.);
- the services must be “communal services” performed “in the direct interest of the said community”, and not relate to the execution of works intended to benefit a wider group;
- the “members of the community” (that is to say the community which has to perform the services) or their “direct representatives” (for example the village council) must “have the right to be consulted in regard to the need for such services”.<sup>632</sup>

<sup>631</sup> *ibid.*, paras 62–64.

<sup>632</sup> *ibid.*, para. 65.

## Imposition of labour for public works or services and other specified purposes

282. As the Committee noted in its 2007 General Survey on the subject, systematic state practices of imposing compulsory labour on the population (e.g. where able-bodied persons could be called up for limited periods to perform public works, such as construction and maintenance of public buildings and roads, bridges, dams, as well as reforestation and irrigation works, conservation of natural resources, compulsory cultivation, etc.) have declined worldwide and practically disappeared in the great majority of countries.<sup>633</sup> Exceptions are quite rare and concern legislative provisions that still remain in force rather than remnants of old practices, and the governments concerned often indicate that provisions of this kind have fallen into disuse and that measures are being taken to repeal them.<sup>634</sup> The Committee has urged the governments concerned to take the necessary measures to ensure that the provisions incompatible with the Convention are repealed or amended. In certain other cases the Committee has noted with satisfaction that provisions of this kind have been repealed.<sup>635</sup>

283. With regard, more particularly, to *compulsory cultivation*, the Committee has considered that, if provisions imposing this kind of labour may be applied only in the event of actual or threatened famine, they fall outside the scope of the Convention as emergency measures, in virtue of *Article 2(2)(d)* of the Convention.<sup>636</sup> All other forms of compulsory cultivation, as well as other forms of compulsory labour referred to above, if they fail to meet the criteria of “minor communal services”, are incompatible with Convention No. 29, as well as with Convention No. 105, which prohibits the use of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development.<sup>637</sup> The Committee has therefore addressed comments to certain governments in this connection, asking them to take the necessary measures in order to repeal or amend the provisions in question.<sup>638</sup> In some other cases the Committee has

<sup>633</sup> *ibid.*, para. 89.

<sup>634</sup> See, for example, *Kenya* – CEACR, observation, 2011: sections 13–18 of the Chief’s Authority Act (Cap. 128), as amended by Act No. 10 of 1997, according to which able-bodied male persons between 18 and 50 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year; the Government has indicated that the above sections of the Chief’s Authority Act have never been enforced and that the Act will be replaced by the Administrative Authority Act; *United Republic of Tanzania* – CEACR, observation, 2010: under article 25(1) of the Constitution, every person has the duty to participate in productive work, and under article 25(3)(d) of the Constitution, no work shall be considered as forced labour, if such work forms part of compulsory national service or the national endeavour at the mobilization of human resources for the enhancement of the society and the national economy; under the Local Government (District Authorities) Act, 1982, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Government Finances Act, 1982, compulsory labour may be imposed, *inter alia*, by the administrative authority for purposes of economic development; several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982, entitled “self-help and community development”, “nation building” and “enforcement of human resources deployment”, provide for an obligation to work; the Government has indicated that the Law Reform Commission is currently carrying out legal research on laws that need amendments or repeal to reflect the current economic, social and political arrangements, including laws which are not compatible with the Convention.

<sup>635</sup> See, for example, *United Republic of Tanzania* – CEACR, observation, 2008: the Employment Ordinance (Cap. 366), under which compulsory labour could be imposed for public purposes, was repealed by the Employment and Labour Relations Act, 2004 (No. 6). The Committee noted, however, that other provisions imposing compulsory labour on the population still remained in force (see footnote 633 above).

<sup>636</sup> General Survey, 2007, para. 90.

<sup>637</sup> *ibid.*

<sup>638</sup> See, for example, *Central African Republic* – CEACR, observation, 2011: section 28 of Act No. 60/109 of 27 June 1960 with respect to the development of the rural economy, under which minimum surfaces for



noted that certain provisions of this kind, including those to which reference was made in the previous General Survey on the subject, have been either repealed or declared null and void by a judicial decision.<sup>639</sup>

284. In certain countries, legislation allowing the call-up of labour in cases of emergency is worded in terms broad enough to permit its application in a wider range of circumstances, for example, where the inhabitants of regions lacking roads suitable for mechanized transport may be called up for work of public interest;<sup>640</sup> where the mobilization of the civilian population may be ordered in the event of serious economic crisis;<sup>641</sup> where persons and goods may be requisitioned in order to satisfy national needs and to protect the nation's vital interests;<sup>642</sup> or for the purpose of promoting the country's economic and social development.<sup>643</sup> These provisions appear to go far beyond the exception concerning emergencies provided for in *Article 2(2)(d)* of Convention No. 29 and permit the mobilization of labour "for purposes of economic development" within the meaning of Convention No. 105. In certain other cases, powers to call up labour originally granted during a period of emergency appear to have been maintained in force for longer periods, even after the immediate conditions which occasioned the emergency have ceased to exist.<sup>644</sup>

285. The Committee has considered that, in order to avoid any uncertainty as to the scope of national provisions or their compatibility with the Convention, it should be clear from the legislation itself that recourse to compulsory labour as an emergency

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cultivation are to be established for each rural community and compulsory labour may be exacted; *Sierra Leone* – CEACR, observation, 2011: section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on "natives". The Government has indicated in its report that section 8(h) is not applicable in practice. It has also stated that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable.

<sup>639</sup> See, for example, *Swaziland* – CEACR, observation, 2010: the Committee noted with interest that the Swazi Administration Order (No. 6 of 1998), which provided for orders requiring compulsory cultivation, anti-soil erosion works, etc., enforceable with severe penalties for non-compliance, had been challenged before the High Court of Swaziland which declared the Order null and void.

<sup>640</sup> *Congo* – CEACR, observation, 2011: Act No. 24/60 of 11 May 1960 on requisitioning, under which persons requisitioned who refuse to work are liable to a penalty of imprisonment.

<sup>641</sup> *Turkey* – CEACR, direct request, 2011: under article 18 of the Constitution, the term "forced labour" does not include services required from citizens during a state of emergency, which may be declared, under article 119 of the Constitution, inter alia, in the event of a serious economic crisis. Under section 10 of the State of Emergency Act (No. 2935, of 25 October 1983), the Council of Ministers may issue decrees to determine obligations and measures to be taken in the event of serious economic crisis, which may concern, inter alia, labour issues.

<sup>642</sup> *Morocco* – CEACR, observation, 2011: the Dahirs of 10 August 1915 and 25 March 1918, as retained in the Dahir of 13 September 1938 and reintroduced by Decree No. 2-63-436 of 6 November 1963. The Committee requested the Government to take steps to ensure that requisitioning could only be decided upon under conditions strictly limited to situations endangering the existence or well-being of the whole or part of the population. The Government has indicated in its report that this issue was debated during discussions held with the social partners and a consensus was obtained to amend the provisions in question.

<sup>643</sup> *Côte d'Ivoire* – CEACR, direct request, 2011: Act No. 63-4 of 17 January 1963 on the use of persons for the purpose of promoting the country's economic and social development and its implementing Decree No. 63-48 of 9 February 1963 allow the requisitioning of individuals or of groups for the performance of certain tasks which are in the national interest (sections 1, 2, 4 and 6). The Government has indicated that the Act is outdated and no longer applied. The Committee has noted, however, that the circumstances covered by the Decree (section 2) do not amount to cases of force majeure, disaster or, in general, circumstances endangering the whole or part of the population.

<sup>644</sup> See, for example, *Sri Lanka* – CEACR, observation, 2011: the Committee referred to the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations, adopted in 1989 and revised in 1994, 2000, 2005 and 2006.

measure is confined within the limits indicated above. Where emergency powers are granted by ad hoc legislation, the authority to impose compulsory labour should be given only in circumstances constituting an emergency within the meaning of the Convention. In all cases, recourse to compulsory labour should continue only as long as strictly required to meet the emergency situation, and then (unless automatically limited in duration) should be terminated by a formal and public decision or declaration.<sup>645</sup> The Committee has noted with satisfaction that, in some cases, the provisions authorizing recourse to compulsory labour under emergency powers have been amended in accordance with the above guidelines.<sup>646</sup>

286. Since its last General Survey on the subject, the Committee has continued to make comments on one extremely serious case of flagrant, longstanding and persistent violation of the Convention by the authorities and the military in a country<sup>647</sup> where this grave situation has emerged over the last few decades, in contrast to the general tendency of the worldwide decline of state practices of imposing compulsory labour on the population, including children.<sup>648</sup> The Committee urged the Government to implement the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 under article 26 of the Constitution.<sup>649</sup> This grave situation has also been the subject of overwhelming criticism and condemnation on numerous occasions in the Conference Committee on the Application of Standards of the International Labour Conference and in the Governing Body, by governments and social partners alike.<sup>650</sup> In its continuing observations addressed to the Government, the Committee has identified four areas in which measures should be taken by the Government: (i) issuing specific and concrete instructions to the civilian and military

<sup>645</sup> General Survey, 2007, para. 64.

<sup>646</sup> See, for example, *Greece* – CEACR, observation, 2010: following the amendment introduced by Act No. 3536/2007 concerning special regulations of migration policy issues and other issues under the competence of the Ministry of the Interior, Public Administration and Decentralization (section 41(7)), Legislative Decree No. 17 of 1974 on civil emergency planning, under which the full or partial mobilization of civilians may be proclaimed, shall be applicable only in times of war. As regards requisition in times of peace, section 41 of the Act stipulates that the requisition of personal services is possible only in case of emergency, i.e. in a “sudden situation requiring the taking of immediate measures to face the country’s defensive needs or a social emergency against any type of imminent natural disaster or emergency that might endanger the public health”.

<sup>647</sup> *Myanmar* – CEACR, observations, 2008, 2009, 2010, 2011 and 2012.

<sup>648</sup> General Survey, 2007, paras 92–93.

<sup>649</sup> See ILO: *Forced labour in Myanmar (Burma)*, report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), *Official Bulletin*, Vol. LXXXI, 1998, Series B, special supplement. According to the report, the Convention was violated in national law and in practice in a widespread and systematic manner; there was abundant evidence showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military. The report concluded that “A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and engages its responsibility for the violation of a peremptory norm in international law ... Any person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity”. The Commission of Inquiry made the following recommendations: (1) that the relevant legislative texts be brought into line with the Convention; (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and (3) that the penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

<sup>650</sup> See, for example, the documents submitted to the Conference Committee on the Application of Standards during the 100th Session of the International Labour Conference in June 2011, as well as the discussions and conclusions of that Committee (ILC, 100th Session, *Provisional Record* No. 18, Part Three (A) and Doc. D.5(D)); see also the documents submitted to the Governing Body at its 310th and 312th Sessions (March and November 2011), as well as the discussions and conclusions of the Governing Body during those sessions (GB.310/5, GB.312/INS/6).

authorities; (ii) ensuring that the prohibition of forced labour is given wide publicity; (iii) providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and (iv) ensuring the enforcement of the prohibition of forced labour.<sup>651</sup>

287. In response to this grave situation, the ILO has been using its institutional framework, the existing supervisory procedures and technical cooperation means (see box below). In its most recent observation,<sup>652</sup> the Committee, while noting the positive developments in the country, urged the Government to adopt without delay legislation repealing the Village Act and the Towns Act of 1907, and to undertake all the necessary and urgent measures for the full implementation of the recommendations of the Commission of Inquiry by implementing the concrete practical requests addressed by the Committee to the Government in order to achieve full compliance with the Convention, both in law and in practice.

#### **ILO response to forced labour in Myanmar**

- ❑ The ILO has used the full range of its available arsenal towards achieving effective application of ratified Conventions in the case of Convention No. 29 in Myanmar. The establishment of a Commission of Inquiry under article 26 of the ILO Constitution in response to a complaint filed in 1996 was followed by a precedential use of article 33 of the ILO Constitution and the adoption of a resolution by the International Labour Conference inviting the Organization's constituents to review their relations with Myanmar and take appropriate measures to ensure that Myanmar cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry. The cooperation between the ILO and the Government was strengthened in 2001 through the signing of an Understanding to allow a high-level team to assess the realities of the forced labour situation in the country and the appointment of the ILO Liaison Officer in Myanmar to cover all activities relevant to ensuring the prompt and effective elimination of forced labour.
- ❑ A hitherto unprecedented complaints mechanism was established in the Supplementary Understanding between the ILO and the Government in 2007 aimed at giving victims of forced labour the opportunity to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking redress. At its November 2011 session, the Governing Body welcomed the indication that legislation was before the Parliament which was said to repeal both the Village Act and the Towns Act of 1907. Nevertheless, the commitment to a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism, but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code remains of critical importance to the implementation of the Commission of Inquiry recommendations.

<sup>651</sup> See *Myanmar* – CEACR, observation, 2011: the Committee fully endorsed the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observed that the Government had not yet implemented the recommendations of the Commission of Inquiry: it had failed to amend or repeal the Towns Act and the Village Act; it had failed to ensure that, in actual practice, forced labour was no longer imposed by the authorities, in particular by the military; and it had failed to ensure that penalties for the exaction of forced labour under the Penal Code were strictly enforced against civil and military authorities.

<sup>652</sup> See *Myanmar* – CEACR, observation, 2012.

- ❑ As regards the cross-cutting elements of the Conventions dealt with in this General Survey, the Committee wishes to draw particular attention to its calls – echoed by the Conference Committee on the Application of Standards – for the Government of Myanmar to extend the presence of the ILO in the country to cover matters pertaining to freedom of association given the intrinsic link between these rights and the effective elimination of forced labour. The Committee welcomes in this regard the recent passage of the Labour Organization Law which appears to fill elements of the long-standing void in the legislative framework in relation to the right of workers to form and join organizations of their own choosing and expresses its firm expectation that this Law will enter into force in the very near future and that the newly formed workers' organizations will be in a position to exercise fully their trade union activities, including with a view to playing their part towards the full and effective elimination of forced labour.

## National service obligations

288. In the last General Survey on the subject, the Committee drew attention to the legislative provisions concerning compulsory civic service or other non-military national service activities. The Committee recalled that, as regards national service obligations imposed outside emergency situations, only compulsory military service is excluded from the scope of the Convention, subject to the condition that it is used “for work of a purely military character” (*Article 2(2)(a)*), this condition being aimed specifically at preventing the call-up of conscripts for public works or development purposes.<sup>653</sup> The Committee has noted the indications of some governments that, in actual practice, legislation concerning non-military national service activities, including provisions authorizing the *use of conscripts for non-military purposes*, applies only in the case of emergencies or in respect of vocational training. Other governments stated that young people engaged in economic development activities as part of their compulsory national service are in practice always volunteers. The Committee has pointed out in this connection that, in order to avoid any ambiguity in the interpretation and to bring legislation into line with the Convention and the indicated practice, the principle that such non-military tasks are restricted to emergencies or performed exclusively by volunteers should be clearly reflected in the legislation.<sup>654</sup>

289. The Committee notes, however, that legislation authorizing the use of conscripts for non-military purposes is still in force in certain countries.<sup>655</sup> In some cases, persons liable to military service but not in fact called up for such service (for example, persons surplus to military requirements) may be required to satisfy their national service obligations in non-military forms, such as work for development purposes in production

<sup>653</sup> General Survey, 2007, para. 94. See also para. 274 above.

<sup>654</sup> *ibid.*

<sup>655</sup> See, for example, *Algeria* – CEACR, observation, 2011: Ordinance No. 74-103 of 15 November 1974 issuing the National Service Code and the Order of 1 July 1987, under which conscripts are required to take part in the running of various sectors of the economy and administration. The Government has indicated that the civic form of national service has not been used since 2001, but the legislation has not yet been amended; *Benin* – CEACR, observation, 2011: Act No. 2007-27 and Decree No. 2007-486, under which persons conscripted for military service in the national interest are assigned socio-economic development work which is not of a purely military character; *Congo* – CEACR, observation, 2011: section 1 of Act No. 16 of 27 August 1981 establishing compulsory military service, according to which national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Government has indicated that the practice of imposing on recruits work which is not purely military in nature has fallen into disuse.

units of factories, public undertakings, etc.<sup>656</sup> There are also countries in which legislation concerning compulsory civic service is still in force;<sup>657</sup> sometimes the governments indicate that this legislation is no longer applied in practice, although it has not been formally repealed.<sup>658</sup> The Committee has therefore requested the governments concerned to take the necessary measures to bring their legislation into compliance with the forced labour Conventions. Since the last General Survey, the Committee has noted with satisfaction that *Cameroon* had repealed the provisions instituting national service for participation in development, making participation in work in the general interest voluntary.<sup>659</sup>

## Restrictions on the freedom of workers to terminate employment

290. As indicated above, the effect of statutory provisions preventing termination of employment of indefinite duration by means of notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with Convention No. 29.<sup>660</sup> The Committee has thus addressed restrictions on the freedom to leave employment by giving notice of reasonable length that were imposed in different countries, including career military personnel in time of peace. It has noted, in particular, that in some countries, any person employed by the government, or by any public administration, establishment or body or any authority of the public or mixed sector, who unilaterally terminates employment (even with notice) without the consent of the employer or the authorization of the competent authority, is liable to penal sanctions of imprisonment; workers in the *public*

<sup>656</sup> See, for example, *Chad* – CEACR, observation, 2011: section 14 of Ordinance No.001/PCE/CEDNACVG/91 organizing the armed forces, under which conscripts who are fit for service are classified into two categories: the first, the size of which is determined each year by decree, is incorporated and compelled to perform active service; the second remains at the disposal of the military authorities for two years and may be called up to perform work in the general interest by order of the Government; *Egypt* – CEACR, observation, 2011: section 1 of Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service of young persons on completion of their studies, under which young persons, male and female, who have completed their studies and who are surplus to the requirements of the armed forces, may be directed to work, such as development of rural and urban societies, agricultural and consumers' cooperative associations and work in production units of factories.

<sup>657</sup> For example, *Algeria* – CEACR, observation, 2011: sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 respecting civic service, as amended in 1986 and 2006, which require persons who have completed a course of higher education or training to perform a period of civic service ranging from one to four years before being able to obtain employment or exercise an occupation; refusal to perform civic service and the resignation of the person concerned without acceptable grounds result in their prohibition from exercising an activity on their own account, any violation being punishable under section 243 of the Penal Code.

<sup>658</sup> For example, *Dominica* – CEACR, observation, 2011: the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)). The Committee has observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Government has indicated that section 35(2) of the Act has not been applied in practice.

<sup>659</sup> See *Cameroon* – CEACR, observation, 2008: Act No. 73-4 of 9 July 1973 instituting national service for participation in development, which allowed the imposition of work in the general interest on citizens aged between 16 and 55 years for 24 months, subject to penalties of imprisonment for refusal was repealed by Act No. 2007/003 of 13 July 2007.

<sup>660</sup> See para. 271 above.

*service* and *essential services* are the most affected.<sup>661</sup> In certain other countries, military officers and other career members of the armed forces cannot resign their commission before their resignation is formally accepted by the competent body, which takes a decision after having examined the reasons for resignation.<sup>662</sup> Since the last General Survey, the Committee has noted with satisfaction that *Uganda* had repealed the provisions under which workers employed in *essential services* could be prohibited from terminating their contract of service.<sup>663</sup> As regards private sector workers, the Committee has expressed concern about the vulnerable situation of *domestic workers*, including *migrant domestic workers*, particularly in relation to their freedom to terminate employment. It has requested the governments concerned to adopt provisions with a view to ensuring adequate protection of these workers with regard to termination of their employment relationship, including their right to have recourse to the courts, if necessary.<sup>664</sup>

<sup>661</sup> See, for example, *Bangladesh* – CEACR, observation, 2009: under the Essential Services (Maintenance) Act, No. LIII of 1952, termination of employment by any person employed by the central Government without the consent of the employer is punishable with imprisonment for up to one year, notwithstanding any express or implied term in the contract of employment providing that the employee may freely, and with notice, terminate his or her employment (sections 3, 5(1)(b) and explanation 2, and section 7(1)). Although the Government has indicated that the 1952 Act has become redundant and its provisions are no longer applied in practice, similar provisions are contained in the Essential Services (Second) Ordinance, No. XLI of 1958 (sections 3, 4(a) and (b) and 5), which is still in force; *Pakistan* – CEACR, observation, 2011: Essential Services (Maintenance) Act, 1952, under which a person in government employment who terminates employment without the consent of the employer is subject to imprisonment for up to one year. The Government has indicated that an amendment to the Essential Services (Maintenance) Act, 1952, has to be considered by the tripartite commission on the consolidation, simplification and rationalization of labour laws; *Syrian Arab Republic* – CEACR, observation, 2010: Legislative Decree No. 46 of 23 July 1974, amending section 364 of the Penal Code, under which a term of imprisonment of from three to five years may be imposed for leaving or interrupting work as a member of the staff of any public administration, establishment or body or any authority of the public or mixed sector before resignation has been formally accepted by the competent authority. The Government has indicated that the amendment of the Penal Code is currently ongoing and that the Committee's comments are being taken into account in order to bring it into conformity with the Convention.

<sup>662</sup> See, for example, *Egypt* – CEACR, direct request, 2011: section 141 of Act No. 232, of 1959, under which the military officer's service does not terminate until the resignation is accepted. The Committee has observed that, under the above provision, the application to resign may be either accepted or refused. It has also noted that the Act does not establish the criteria to be used to decide whether a resignation will be accepted; *Nigeria* – CEACR, direct request, 2011: section 11 of the Terms and Conditions of Service, Nigerian Army Officers (1984), according to which an officer holding a regular commission may be permitted to resign, but a ruling on each application will be made by the Army Council; section 17(10) of the Police Act, Cap. 359, under which no police officer other than a superior officer shall be at liberty to resign or withdraw himself from his duties without the approval of the Police Council; *Uganda* – CEACR, observation, 2011: the National Resistance Army (Conditions of Service) (Officers) Regulations No. 6 of 1993 (now the Uganda People's Defence Forces (Conditions of Service) (Officers) Regulations), section 28(1), under which the Board may permit officers to resign their commission at any stage during their service, but the officer applying for the resignation must give his/her reasons for it. The Board may grant permission to resign only after it has considered these reasons and finds them fit.

<sup>663</sup> See *Uganda* – CEACR, observation under Convention No. 105, 2009: Trade Disputes (Arbitration and Settlement) Act, 1964, which contained provisions under which workers employed in "essential services" may be prohibited from terminating their contract of service, was repealed by the Labour Disputes (Arbitration and Settlement) Act, 2006 (section 44(1)). Section 34(1) of the new Act expressly provides that an individual employee (employed in "essential services") shall not be prohibited from giving notice of termination of employment at any time under the Employment Act, 2006.

<sup>664</sup> See, for example, *Kuwait* – CEACR, observation, 2011: the Committee noted that the new Labour Code (Law No. 6, 2010) excluded domestic workers from its scope, but authorized the competent minister to issue a decision specifying the rules governing the relationship between domestic workers and their employers. It expressed the hope that such a ministerial decision would be issued in the near future and that it would provide adequate protection for domestic workers as regards their freedom to terminate employment.

## Work of prisoners for private companies

291. In its 2007 General Survey, the Committee noted a trend towards two related phenomena in some member States, which has had a marked effect on the application of the Convention. First, prisoners in publicly administered prisons are more often working for private enterprises, both inside and outside prison premises. Second, in some cases, prison administration has been contracted to private firms, and prisoners are working for purposes of production in these prisons. This trend can be observed both in the countries bound by the Convention and in non-ratifying States and has an obvious effect on the application of the Convention, particularly *Article 2(2)(c)*.<sup>665</sup> After a thorough, in-depth analysis of this trend, the Committee has come to the conclusion that the privatization of prison labour is not incompatible with the Convention, if designed and implemented on the understanding that there are additional requirements that must be fulfilled in order to ensure compliance. As indicated above,<sup>666</sup> where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, by giving their free and informed consent and without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention, such work would not fall within the scope of the Convention. The Committee has considered that, in the prison context, the most reliable indicator of the voluntariness of labour is that the work is performed under conditions which approximate a free labour relationship, including wages (leaving room for deductions and attachments), social security and occupational safety and health.<sup>667</sup> As the Committee noted in its previous General Survey, a certain number of countries have already made progress towards full compliance with the Convention by taking measures, both in law and in practice, so that the conditions of the private employment of prisoners progressively approach those of free workers.<sup>668</sup> Others have been requested by the Committee to take measures to that effect.<sup>669</sup> The Committee reiterates its hope to see continuous advances in this sense and believes that the foregoing indications will provide a useful guide as to how the Convention should be applied for the benefit of those member States which have ratified the Convention, and those which are contemplating doing so.

## Obligation to perform overtime work under threat of a penalty

292. As the Committee pointed out in its 2007 General Survey, the imposition of overtime does not affect the application of the Convention so long as it respects the limits permitted by national legislation or collective agreements.<sup>670</sup> Above those limits, the Committee has considered it appropriate to examine the circumstances in which a link arises between an obligation to perform overtime work and the protection provided by the Convention. The Committee has noted in this connection that, in some cases, fear of dismissal drives workers to work overtime hours well beyond what is allowed under national legislation. In other cases, where remuneration is based on productivity targets, workers may be obliged to work beyond normal working hours, as only in so doing can

<sup>665</sup> General Survey, 2007, paras 98–101.

<sup>666</sup> See para. 279 above.

<sup>667</sup> General Survey, 2007, paras 59–60 and 114–122.

<sup>668</sup> *ibid.*, para. 61 and footnotes 123 and 124.

<sup>669</sup> *ibid.*, para. 61 and footnote 125.

<sup>670</sup> *ibid.*, para. 132.

they earn the minimum wage.<sup>671</sup> The Committee has observed that, although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both.<sup>672</sup> Workers in the most vulnerable groups (such as *agricultural workers*) are often the most affected.<sup>673</sup> With regard to these issues, which have been raised before the Committee on several occasions by workers' organizations,<sup>674</sup> the Committee has considered that, in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment and becomes one of imposing work under the menace of a penalty, which calls for protection by the Convention.<sup>675</sup> The Committee has therefore requested that the necessary measures be adopted to ensure compliance with the Convention in order to protect workers in the sectors concerned, including *maquilas* (export processing zones), *plantations* and the *public service*.<sup>676</sup>

## Slavery, slavery-like practices and other illegal forms of compulsion to work: Imposition of forced labour on workers in most vulnerable groups

293. In its previous General Survey, the Committee noted that, despite the prohibition of slavery and similar practices at the international level and the significant progress made by States in adopting legislation to eliminate slavery-like practices, some such practices, which may be characterized as the *vestiges of slavery*, still survive in some very rare cases today.<sup>677</sup> Thus, for a number of years, the Committee has been examining the situation in one country where conditions of slavery continue to be transmitted by birth to individuals from certain ethnic groups who are compelled to work for their master without payment, principally as shepherds, agricultural workers or domestic employees, despite the anti-slavery legislation and positive measures taken by the Government to eradicate these practices. The Committee has requested the Government concerned to

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<sup>671</sup> *ibid.*, para. 133.

<sup>672</sup> See, for example, *Guatemala* – CEACR, observation, 2010.

<sup>673</sup> *ibid.*, concerning imposition of work in excess of normal working hours on plantation sector workers.

<sup>674</sup> Thus, the Inter-Union Commission of El Salvador made comments on the situation of workers in *maquilas* (export processing zones) who were required, under threat of dismissal, to work overtime in excess of the limits laid down in the national legislation and without pay, in order to achieve production targets set by *maquila* companies (see *El Salvador* – CEACR, observation, 2006). The Trade Union Confederation of Guatemala (UNSITRAGUA) and the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights referred in their respective comments to the obligation to work overtime under the threat of a penalty for certain categories of public sector workers and certain workers in the private sector (*plantations*) (see *Guatemala* – CEACR, observation, 2010).

<sup>675</sup> General Survey, 2007, para. 134.

<sup>676</sup> See *El Salvador* – CEACR, direct request, 2008: the Committee noted that the Ministry of Labour and Social Welfare was evaluating the activities of its offices established in the EPZs and sought information about the results of this evaluation in connection with the alleged imposition of work beyond normal working hours; *Guatemala* – CEACR, observation, 2010: the Committee requested information on the measures taken to protect both public sector workers and private sector (*plantations*) workers against the imposition of work beyond normal working hours.

<sup>677</sup> General Survey, 2007, para. 69.



take all the measures necessary to combat slavery and its vestiges through the adoption of the National Action Plan and the strengthening of the law enforcement machinery.<sup>678</sup> Since the last General Survey, the Committee has noted with satisfaction that in another country with reference to the vestiges of slavery, new legislation has been adopted to define, criminalize and penalize slavery-like practices. It requested the Government to take measures to ensure that victims are effectively in a position to assert their rights and asked it to adopt a global strategy to combat slavery.<sup>679</sup>

294. With regard to unlawful practices of *debt bondage*, under which labourers and their families are forced to work for an employer in order to pay off the debts they have incurred or inherited, such practices are still widespread in some countries and affect a significant number of people. As the Committee noted in its previous General Survey, the victims of debt bondage are the poorest people, often illiterate and relatively easy to deceive and be kept in ignorance of their rights; if they try to leave their employment, they are usually caught and returned by force.<sup>680</sup> The manipulation of credit and debt, either by employers or by recruiting agents, is still a key factor that traps *vulnerable workers* in forced labour situations. For example, poor *agricultural workers* or *members of indigenous communities* may be induced into indebtedness through accepting relatively small but cumulative loans or wage advances from employers or recruiters at a time of scarcity.<sup>681</sup> The Committee has observed in this connection that, since debt is the root cause of bonded labour, legal action is required to declare such bondage unlawful and to provide for penal sanctions against those employers who hold their workers in bondage. Such legal action should be accompanied by supplementary measures of economic assistance and rehabilitation for bonded labourers, so as to ensure that they do not fall back into a bonded labour situation.<sup>682</sup> The Committee has noted, with regard to the countries experiencing the most serious problems of bonded labour that, despite the adoption in these countries of specific legislation (and/or national plans) with a view to prohibiting this phenomenon, rehabilitating the victims and punishing perpetrators, the application of such legislation in practice is sometimes hampered by some difficulties, often due to the inadequacy of the labour inspection and law enforcement machinery, or the ineffectiveness of “vigilance committees”. The Committee has consequently requested the governments concerned to take all the necessary measures to identify, release and rehabilitate bonded labourers and to punish perpetrators, by strengthening

<sup>678</sup> See *Niger* – CEACR, observation, 2011: the Committee noted the existence of an archaic form of slavery which is found in nomadic communities. The relations between master and slave are based on direct exploitation: a slave is placed at the disposal of the master and is obliged to work without remuneration. The Committee took note of the adoption of certain measures including the inclusion in the Penal Code of sections 270-1 to 270-5 which criminalize and punish slavery; the establishment in August 2006 of the National Committee to Combat Forced Labour and Discrimination in charge of the drafting of a national action plan; the agreement between the National Statistics Institute and the International Labour Office on the preparation of a study which would give an account of the forms of forced labour found in Niger and provide estimated statistics. The Committee sought information on the measures taken to combat slavery and its vestiges, including the measures taken for the adoption of the national action plan on combating all forms of forced labour, in particular slavery, and on the action taken by the National Committee.

<sup>679</sup> See *Mauritania* – CEACR, observation, 2010: Act No. 2007/48, which defines, criminalizes and penalizes slavery-like practices and makes a distinction between the crime of slavery and offences of slavery. The Committee has considered that the adoption of the Act constitutes an important step in combating slavery and that the challenge will henceforth lie in the effective application of the legislation.

<sup>680</sup> General Survey, 2007, para. 71. According to the information available, bonded labour is widespread in agriculture, but has been also detected in mines, brick kilns, leather, fish processing and carpet factories. In some regions, members of indigenous and tribal peoples are the most affected.

<sup>681</sup> *The cost of coercion*, op. cit., para. 40.

<sup>682</sup> General Survey, 2007, para. 71.

labour inspection and law enforcement machinery, conducting a nationwide statistical survey on bonded labour and imposing adequate penal sanctions, as required by *Article 25* of the Convention.<sup>683</sup> In some other cases, the Committee has emphasized the importance of strengthening the legal framework, for example by adopting legislative or other measures with the objective of undermining the economic and financial interests of those exploiting bonded labour, which would constitute an additional tool to combat forced labour, and by increasing the effectiveness of the penalties imposed on perpetrators, which must be sufficiently dissuasive and strictly enforced.<sup>684</sup> In a number of cases, the Committee has specifically addressed the vulnerable situation of *members of indigenous communities*, who often become victims of bonded labour, serfdom and other forced labour practices.<sup>685</sup>

**295. On numerous occasions, the Committee has expressed concern about the vulnerable situation of migrant workers, including migrant domestic workers, who are often subjected to abusive practices by employers, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour.** More particularly, many *migrant domestic workers* work under precarious and difficult conditions, which may be characterized by: atypical working-time arrangements (hours of work, weekly rest periods and leave); insufficient guarantees covering their wages (observance of minimum rates, the payment of wages); insufficiency or absence of social protection; and the lack of information on the exercise and defence of the above rights (for example, recourse to the courts). The vulnerability of these workers, who are in their great majority *women and young persons*, arises principally out of two characteristics of their work: firstly, they are employed in domestic work, for which only a low level of protection is set out in labour legislation; and secondly, by working abroad they are outside the direct legal protection provided by their country of origin. The vulnerability of the situation of *migrant domestic workers* is increased by the absence of autonomy of these workers in respect of their employers. Thus, the Committee has noted that the so-called visa “sponsorship” system (or “*Kafala*” system) in certain countries in the Middle East may be conducive to the exaction of forced labour<sup>686</sup> and requested the

<sup>683</sup> For example, *India* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2011.

<sup>684</sup> See, for example, *Brazil* – CEACR, observation, 2010: the Committee noted, in particular, a Bill to provide a legal basis for the prohibition of persons recognized to have used bonded labour from obtaining fiscal benefits and credits or from participating in public contracts, and a Bill to increase the penalties applicable to the crime of reducing a person to a condition akin to slavery. The Committee pointed out that, once adopted, these Bills would constitute significant additional tools in combating bonded labour. It further noted that the draft amendment to article 243 of the Constitution (PEC No. 438/2001) was also a significant initiative intended to authorize the expropriation, without compensation, of establishments in which the use of slave labour has been identified.

<sup>685</sup> See, for example, *Paraguay* – CEACR, observation, 2010: the Committee expressed concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. While noting positive action undertaken by the Government to eradicate bonded labour, such as the establishment of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour and the development of an action plan, the Committee observed that the measures taken should be reinforced and lead to systematic action which is commensurate with the scope and gravity of the problem; *Peru* – CEACR, observation, 2011: for a number of years, the Committee has been examining the situation of members of indigenous communities who often become victims of forced labour practices (slavery, debt bondage and serfdom), particularly in such sectors as agriculture, stock-raising and forestry. While noting the positive measures taken by the Government, such as the establishment of the National Commission to Combat Forced Labour, the adoption of the National Plan and the creation of a special labour inspection unit to combat forced labour, the Committee stressed the importance of the adoption of penal provisions specifically criminalizing forced labour and defining its constituent elements, so as to cover all the forced labour practices existing in the country.

<sup>686</sup> See, for example, *Saudi Arabia* – CEACR, observation, 2010: the Committee requested the Government to take steps to adopt new regulations under section 7 of the Labour Code in order to protect migrant domestic

governments concerned to adopt legislative provisions specially tailored to the difficult circumstances faced by this category of workers and to protect them from abusive practices. The Committee has also considered it necessary to adopt measures to protect *migrant workers* by controlling the exploitative aspects of the activities of private recruitment agencies, to prohibit employers from withholding workers' passports and to eliminate all other restrictions on the fundamental rights of domestic and other migrant workers, in order to guarantee them standard labour protection.<sup>687</sup> Turning to *migrants in irregular situations*, whose vulnerability exposes them to the exploitation of their labour, the Committee has pointed out that the penalization of unlawful migration increases their vulnerability still further and it has requested the governments concerned to adopt the necessary measures to protect migrant workers from the exaction of forced labour, regardless of their legal status.<sup>688</sup> The Committee has noted various positive steps undertaken to ensure that domestic workers are aware of their rights, either through training workshops and information campaigns, or through the adoption of provisions governing a consolidated labour contract for domestic workers and a procedure for the investigation of complaints filed by domestic workers against their employers. The Committee has requested information on all the measures taken, in both law and practice, to strengthen the protection of *migrant domestic workers* with a view to the elimination of any forced labour among this category of workers, by providing the necessary assistance to enable them to assert their rights and denounce any abuses of which they may be victims.<sup>689</sup> The situation of workers in the most vulnerable groups, including migrant workers, is often addressed by workers' organizations in their comments supplied under article 23 of the ILO Constitution, which are regularly examined by the Committee.<sup>690</sup>

296. Since its last General Survey, the Committee has continued to examine information concerning *abductions of persons for forced labour purposes* affecting thousands of people,<sup>691</sup> including children,<sup>692</sup> in the context of armed conflicts in certain regions. The

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workers from abusive practices and conditions that amount to the exaction of forced labour caused by the visa "sponsorship" system.

<sup>687</sup> See, for example, *Indonesia* – CEACR, observation, 2009.

<sup>688</sup> See, for example, *Italy* – CEACR, direct request, 2010: Act No. 94 of 15 July 2009 issuing provisions respecting public security amended the Act of 1998 regulating immigration and the status of foreign nationals by inserting section 10bis, under the terms of which the illegal entry and residence of migrants constitute a criminal offence.

<sup>689</sup> See, for example, *Lebanon* – CEACR, observation, 2011; *Peru* – CEACR, observation, 2011.

<sup>690</sup> For example, the Committee notes the comments by workers' organizations supplied with Government reports under article 19 of the ILO Constitution: Canada – Canadian Labour Congress (CLC) and Confederation of National Trade Unions (CSN); *Poland* – Independent and Self-Governing Trade Union "Solidarnosc"; *Portugal* – General Workers' Union (UGT) and Confederation of Portuguese Tourism (CTP).

<sup>691</sup> See *Democratic Republic of the Congo* – CEACR, observation, 2012: the Committee noted with deep concern the information regarding human rights violations committed by the state security forces and other armed groups, especially the Armed Forces of the Democratic Republic of the Congo (FARDC), including numerous cases of forced labour and sexual slavery, particularly in the mining areas of the Kivus. The Committee urged the Government to take all the necessary measures to bring an immediate end to these practices which constitute a most serious violation of the Convention, and to ensure that adequate sanctions are imposed on the perpetrators; *Sudan* – CEACR, observation, 2011: for many years, the Committee has been referring to the continuing existence of the practices of abduction and forced labour exploitation, which affect thousands of women and children in the regions of the country where an armed conflict was under way. While noting the positive measures taken by the Government, including through the Committee for the Eradication of Abduction of Women and Children (CEAWC), as well as the Government's renewed commitment to resolve the problem, the Committee strongly urged the Government to redouble its efforts in order to completely eradicate the forced labour practices which constitute a gross violation of the Convention, and in particular to resolve the cases of abductions in all the regions of the country and to ensure the victims' right to be reunified with their families.

Committee has observed that the situations concerned constitute gross violations of the Convention, since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions, combined with ill-treatment which may include torture and death, as well as sexual exploitation.<sup>693</sup> The Committee has therefore urged the governments concerned to take effective and prompt action to eliminate such practices and to ensure that, in accordance with *Article 25* of the Convention, penal sanctions are imposed on the perpetrators.

## Trafficking in persons

297. Since its 2001 general observation concerning human trafficking, in which the Committee sought information on the measures taken or envisaged to prevent, suppress and punish this scourge,<sup>694</sup> the Committee has been systematically examining the problem of trafficking in its numerous individual comments addressed to ratifying States. In these comments, the Committee has drawn attention to *Article 1(1)* of the Convention, under which ratifying States are bound to suppress all forms of forced or compulsory labour within the shortest possible period, and *Article 25*, under which the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced. Referring to the definition of trafficking in persons in the Palermo Protocol,<sup>695</sup> the Committee pointed out, in particular, that the notion of exploitation of labour inherent in this definition allows for a link to be established between the Palermo Protocol and Convention No. 29, and makes clear that trafficking in persons for the purpose of exploitation (which is specifically defined to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation) is encompassed by the definition of forced or compulsory labour provided under *Article 2(1)* of the Convention.<sup>696</sup> Another important element of the definition of trafficking in persons in the Palermo Protocol, which brings it within the scope of Convention No. 29, is the means of coercion used against an individual, including the threat or use of force, abduction, fraud, deception, the abuse of power or a position of vulnerability, which definitely exclude the voluntary

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<sup>692</sup> See *Uganda* – CEACR, observation, 2009: the Committee expressed concern about numerous cases of abductions of thousands of children in connection with armed conflict in the northern part of the country for the purpose of exploitation of their labour. Abducted children were forced to provide work and services as guards, soldiers and concubines, with such abductions being connected with killings, beatings and the rape of these children. Since the country has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee expressed the view that the problem of the forced labour of children may be examined more specifically under the latter Convention, which requires ratifying States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee accordingly asked the Government to refer to its comments on the application of Convention No. 182.

<sup>693</sup> General Survey, 2007, para. 70.

<sup>694</sup> CEACR, general observation on Convention No. 29, 2001: the Committee sought information, in particular, on the provisions of national law aimed at punishing the exaction of forced or compulsory labour, trafficking in persons and the exploitation of the prostitution of others, the measures taken to ensure that such provisions are strictly enforced against perpetrators, as well as measures designed to encourage victims to turn to the authorities (such as permission to stay in the country at least for the duration of court proceedings, efficient protection of victims willing to testify from reprisals by the exploiters, etc.).

<sup>695</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (the “Palermo Protocol”) which supplemented the United Nations Convention against Transnational Organized Crime (2000). While the UN Convention targets transnational organized crime, as defined in this instrument, ILO Convention No. 29 is aimed at the prohibition of forced or compulsory labour in all its forms, whether by public bodies or private persons, irrespective of their connection with organized crime.

<sup>696</sup> General Survey, 2007, para. 77.

offer or consent of the victim. With regard to the latter, the Palermo Protocol contains a qualifying provision that the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the abovementioned means have been used. Where the victim is a child, the crime of trafficking in persons can be established irrespective of the use of means of coercion or deceit referred to above.<sup>697</sup>

298. Since trafficking in persons is closely linked to the imposition of forced or compulsory labour or services, it should be punished as a criminal offence under *Article 25* of the Convention.<sup>698</sup> While the penal legislation of most countries that have ratified Convention No. 29 provides for the punishment of the exaction of forced compulsory labour, the Committee has noted since its last General Survey that a number of countries have introduced into their national legislation specific provisions aimed at punishing trafficking in persons, either by amending their criminal codes,<sup>699</sup> or by adopting special anti-trafficking laws.<sup>700</sup> Some other countries are currently in the process of adopting such specific provisions.<sup>701</sup> With regard to the prevention of trafficking in persons and the protection of victims of trafficking, which is essential for the efficient eradication of human trafficking and thereby contributes to the suppression of all forms of forced or compulsory labour, as required by the Convention, the Committee has noted with interest on numerous occasions since its last General Survey the adoption by ratifying States of anti-trafficking national plans and other policy measures and has sought information on their application in practice (*Argentina, El Salvador, Indonesia, Mexico, Zambia*).<sup>702</sup> Particular attention has been paid in this connection to the situation of persons in the most vulnerable groups, such as *migrant workers, domestic workers, informal sector workers, women and children*.<sup>703</sup>

<sup>697</sup> *ibid.*, paras 79 and 85. In a number of cases, the Committee has closely followed the issue of child trafficking under Convention No. 29. However, where the country in question has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee has usually expressed the view that this problem can be examined more specifically under Convention No. 182, since the protection of children is enhanced by the fact that the latter Convention requires ratifying States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee has accordingly asked the governments concerned to refer in such cases to its comments on the application of Convention No. 182. See, for example, *Haiti* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2010; *Uganda* – CEACR, observation, 2009.

<sup>698</sup> The offence of trafficking should also be punished under Article 5 of the Palermo Protocol.

<sup>699</sup> For example, *Azerbaijan* (Penal Code, section 144-1); *El Salvador* (Penal Code, sections 367 and 370); *Peru* (Penal Code, section 153); *Turkey* (Penal Code, sections 80 and 227(3)).

<sup>700</sup> For example, *Argentina* (Act No. 26364 of 9 April 2008 on the prevention and punishment of trafficking in persons and assistance to victims); *Djibouti* (Act No. 210/AN/07/5th L of 27 December 2007 respecting measures to combat trafficking in persons); *Guyana* (Combating of Trafficking in Persons Act, 2005); *Indonesia* (Law No. 21/2007 of 19 April 2007 on the elimination of the crime of human trafficking); *Mexico* (Act of November 2007 to prevent and punish trafficking of persons); *Zambia* (Anti-Human Trafficking Act No. 11 of 2008).

<sup>701</sup> For example, *Haiti* – CEACR, observation, 2011 (two bills on human trafficking are under elaboration); *India* – CEACR, observation, 2010 (a bill to amend the Immoral Traffic (Prevention) Act, 1956, is under consideration by the Government with a view to redefining the offence of trafficking in persons and reinforcing penal sanctions); *Kuwait* – CEACR, observation, 2011 (a bill on combating trafficking in persons has been submitted to the Council of Ministers for adoption before its referral to Parliament).

<sup>702</sup> See *Argentina* – CEACR, observation, 2010; *El Salvador* – CEACR, observation, 2009; *Indonesia* – CEACR, observation, 2009; *Mexico* – CEACR, observation, 2010; *Zambia* – CEACR, observation, 2011. According to the information supplied by the governments in their reports under article 19 of the ILO Constitution, such national plans and other measures have been adopted in countries which have not yet ratified the Convention, for example, in China (Action Plan on Combating Trafficking in Women and Children, 2008–12) and the United States (comprehensive anti-trafficking policy measures have been adopted under the Trafficking Victims Protection Act, 2000, in the field of prevention and victim protection).

<sup>703</sup> Regarding the situation of the most vulnerable groups, see paras 293–296 above.

299. The Committee noted in its previous General Survey that some countries have altered their definition of forced labour for the purposes of their penal codes so as to cover acts connected with trafficking in persons.<sup>704</sup> In some other cases, anti-trafficking legislation has been worded in such a way as to cover a penal offence of the exaction of forced labour.<sup>705</sup> Some governments expressed the view that, even if legislation specifically criminalizing an offence of forced labour had not yet been adopted, provisions criminalizing human trafficking which contain a reference to its purpose, namely exploitation, could be applicable to protect the victims of forced labour.<sup>706</sup> *The Committee has had the occasion to point out in this connection that the notion of forced labour, as established by the Convention, is broader than that of trafficking in persons and that it is important for national jurisdictions to have precise provisions, taking into account the principle of the strict interpretation of penal law.*<sup>707</sup> *As indicated above, trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour provided in the Convention. However, forced labour or services may be exacted from persons in various kinds of vulnerable situation, including those which are not necessarily connected with human trafficking, as defined in the Palermo Protocol.* The Committee has therefore requested the governments concerned to provide information on the application in practice of penal provisions punishing trafficking, in relation to punishment of the illegal exaction of the various forms of forced or compulsory labour in the situations where the imposition of such labour is not connected with human trafficking in the strict sense of the term,<sup>708</sup> so as to ascertain that all forms of forced or compulsory labour are punishable as a penal offence, as required by the Convention.

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<sup>704</sup> General Survey, 2007, para. 81.

<sup>705</sup> For example, a country which has not ratified the Convention: United States (Trafficking Victims Protection Act of 2000, as amended in 2005 and 2008, section 1589 “Forced Labour”).

<sup>706</sup> See, for example, *Peru* – CEACR, observation, 2011: the Government stated, however, that a Bill was under preparation to bring the legislation into conformity with the Convention. The Committee expressed the hope that this legislative initiative would result in the adoption of penal provisions specifically criminalizing forced labour and defining the constituent elements of forced labour so as to cover all the forced labour practices existing in the country.

<sup>707</sup> *ibid.*

<sup>708</sup> See, for example, *Georgia* – CEACR, direct request, 2011: the Government indicated that penal sanctions punishing trafficking are applicable in all cases of the illegal exaction of forced or compulsory labour. The Committee sought information on the application of such provisions in practice, particularly in situations other than those connected with cross-border trafficking or with such means of coercion as restriction of freedom of movement or the retention of passports.

## Chapter 4

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### Abolition of Forced Labour Convention, 1957 (No. 105)

#### Scope of Convention No. 105 in relation to Convention No. 29

300. As indicated above, Convention No. 105 was designed to supplement Convention No. 29.<sup>709</sup> However, the later instrument does not, as a matter of law, incorporate any of the provisions of the earlier one. Thus, the exceptions laid down in *Article 2(2)* of Convention No. 29 “for the purposes of this Convention” do not automatically apply to Convention No. 105. Consequently, with regard to the exemption of prison labour or other forms of compulsory labour exacted as a consequence of a conviction in a court of law, it is necessary to examine national law and practice in order to ascertain that systems of penal labour are not diverted into methods of mobilizing and using labour for purposes of economic development, which is prohibited under Convention No. 105. Similarly, if a person has to perform compulsory prison labour because she or he has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by Convention No. 105, which prohibits the use “of any form of forced or compulsory labour” (including compulsory prison labour) as a sanction, as a means of coercion, education or discipline, or as a punishment within the meaning of *Article 1(a), (c) and (d)*. Otherwise, in the majority of cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of Convention No. 105, such as in the cases of the exaction of compulsory labour from offenders convicted, for example, of robbery, kidnapping, bombing or other acts of violence or acts or omissions that have endangered the life or health of others, or numerous other offences. The Committee has observed in this regard that, while convict labour exacted from common offenders is intended to reform or rehabilitate them, the same need does not arise in the case of persons convicted for their opinions or for having taken part in a strike.<sup>710</sup>

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<sup>709</sup> See para. 253 above.

<sup>710</sup> General Survey, 2007, para. 146. The Committee has noted in this connection that the scope of the Convention is not restricted to sentences of “hard labour” or other particularly arduous forms of labour, as distinct from ordinary prison labour. Since Convention No. 105 prohibits the use of “any form of forced or compulsory labour” as a sanction, as a means of coercion, education or discipline in circumstances falling within its scope, the Committee has to ascertain whether the type of punishment concerned involves an obligation to perform labour (*ibid.*, para. 147).

301. As the Committee noted in its previous General Survey,<sup>711</sup> compliance of penal laws with the Convention can be ensured at different levels:

- at the level of civil and social rights and liberties when, in particular, political activities and the expression of political views, the manifestation of ideological opposition, breaches of labour discipline and the participation in strikes are beyond the purview of criminal punishment;
- at the level of the penalties that may be imposed, when these are limited to fines or other sanctions that do not involve an obligation to work;<sup>712</sup>
- at the level of the prison system, when the law confers a special status on prisoners convicted of certain political offences, under which they are free from prison labour imposed on common offenders (although they may work at their own request).<sup>713</sup>

### Imposition of sanctions involving compulsory labour for non-compliance with restrictions on civil rights and political freedoms

302. *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour “as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system”. ***The range of activities which must be protected, under this provision, from punishment involving forced or compulsory labour thus comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and which may also be affected by measures of political coercion.*** In the world today, national constitutions and other legislative texts in practically all countries contain provisions recognizing the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest and the right to a fair trial in accordance with due process of law, etc. Legal guarantees of such rights and freedoms constitute an important safeguard against the imposition of forced or compulsory labour as a punishment for holding or expressing political or ideological views or as a means of political coercion or education.<sup>714</sup>

303. However, certain limitations may be imposed by law on the rights and freedoms concerned, which must be accepted as normal safeguards against their abuse, examples being laws against incitement to violence, civil strife or racial hatred. The Committee has observed in this connection that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or

<sup>711</sup> *ibid.*, para. 151.

<sup>712</sup> *ibid.*, para. 150 and footnote 344. The Committee noted the repeal of provisions imposing sentences of imprisonment in circumstances falling within the scope of the Convention.

<sup>713</sup> *ibid.*, para. 150. The Committee noted that a number of countries which have ratified the Convention have introduced such exemptions in their legislation in order to ensure observance of the Convention.

<sup>714</sup> The Committee has repeatedly emphasized the importance for the effective respect of the Convention of legal guarantees regarding freedom of assembly, expression, demonstration and association, and the direct effect which restriction of these rights, in both law and practice, can have on the application of the Convention. See, for example, *Sudan* – CEACR, observation, 2009.



engage in preparatory acts aimed at violence; but sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision.<sup>715</sup>

304. Freedom of expression and the related fundamental rights may also be restricted or suspended during certain exceptional periods, as a result of a declaration of an emergency, state of siege, martial law, etc. Apart from direct imposition of labour which may result from the application of the laws or regulations adopted during particularly troubled periods or in situations of force majeure, it frequently happens that the authorities are also empowered to impose considerable restrictions on the right of individuals to express political views or their opposition to the established order, such restrictions being enforceable with penal sanctions involving compulsory labour. With regard to such emergency measures, the Committee is concerned to ascertain, when examining individual cases of countries bound by the Convention, that recourse to these measures has been occasioned by circumstances of extreme gravity constituting an emergency in the strict sense of the term, and that the measures taken which are relevant to *Article 1(a)* are limited in time and scope to what is strictly required to meet the specific emergency situation.<sup>716</sup> In other cases, while examining the compatibility of national law and practice with the Convention, the Committee has been concerned to ascertain that the offences laid down in the laws against defamation, sedition, subversion, etc., are not defined in such wide or general terms that they may lead to the imposition of penalties involving compulsory labour as a means of political coercion or as a punishment for the expression of political or ideological views.<sup>717</sup>

305. On numerous occasions, the Committee has noted with satisfaction the repeal of provisions under which penal sanctions involving compulsory labour could be imposed for various kinds of: statements or criticism of a political nature; publications and propaganda contrary to the established political order or aimed at infringing national sovereignty or diminishing national sentiment; or tendentious information aimed at impairing the prestige of the State or various authorities; and certain other offences connected with the expression of political views.<sup>718</sup> Since the last General Survey, the Committee has noted with satisfaction the repeal of provisions punishing the participation in certain activities related to political parties and the expression of certain political views with penalties of imprisonment involving compulsory prison labour (*Liberia, Nicaragua*).<sup>719</sup>

306. However, in certain other cases referred to in the previous General Survey, freedom of expression still remains subject to restrictions enforced by sanctions involving compulsory labour, as a consequence of the adoption of legislative and other

<sup>715</sup> General Survey, 2007, para. 154.

<sup>716</sup> *ibid.*, para. 155.

<sup>717</sup> *ibid.*, para. 153.

<sup>718</sup> *ibid.*, para. 156.

<sup>719</sup> See *Liberia* – CEACR, observation, 2010: the Electoral Reform Law of 2004 amended the Elections Law, 1986, by repealing provisions punishing with penalties of imprisonment (involving the obligation to work) the participation in certain political activities, such as activities that seek to continue or revive certain political parties; *Nicaragua* – CEACR, observation, 2010: the old Penal Code provisions punishing with penalties of imprisonment (involving the obligation to work) the expression of political views (such as inciting non-observance of the Constitution, organizing or joining communist parties or parties with another name that support the same or similar ideas) have not been included in the new Penal Code promulgated in May 2008.

provisions which prohibited certain political activities, including participation in various public meetings and assemblies, or the publication of newspapers banned “in the public interest”, or punished the display of emblems and the distribution of publications signifying association with a political object or political organization.<sup>720</sup> The Committee also noted that in some countries it is an offence to publish any information calculated to weaken the government or which injures the State or its establishments, to disseminate views or information of such a nature as to prejudice the public interest or the development of the nation,<sup>721</sup> to disseminate tendentious information calculated to disturb the constitutional or legal order or the political or economic system.<sup>722</sup> Such provisions are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views, and in so far as they are enforceable with sanctions involving compulsory labour, they fall within the scope of the Convention. This may also be true of certain other widely worded provisions intended to protect the authority of the State or its institutions, for example, where it is an offence to publish or disseminate information provoking or encouraging tendencies calculated to impair the integrity of the State,<sup>723</sup> or to suppress, revoke or undermine certain basic constitutional principles.<sup>724</sup> On the other hand, the Committee has referred to some legislative provisions which, even if worded in reasonably precise terms, by their nature still leave a

<sup>720</sup> See, for example, *Kenya* – CEACR, observation, 2011: the Government has taken steps with a view to bringing certain provisions of the Penal Code, the Public Order Act (Cap. 56) and the Prohibited Publications Order, 1968, into conformity with the Convention; *United Republic of Tanzania* – CEACR, observation, 2010: the Government has indicated that certain provisions of the Penal Code, the Newspaper Act and the Local Government (District Authorities) Act, falling within the scope of the Convention, have been identified by the Law Reform Commission as being incompatible with the forced labour Conventions, and recommendations are being prepared with a view to repealing or amending these provisions.

<sup>721</sup> See, for example, *Afghanistan* – CEACR, observation, 2011: sections 184(3), 197(1)(a) and 240 of the Penal Code, under which prison sentences involving an obligation to perform labour may be imposed, inter alia, for the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning the internal affairs of the country which reduce the prestige and standing of the State, or for the purpose of harming public interest and goods; *Philippines* – CEACR, observation, 2011: sections 142 and 154(1) of the Penal Code, under which a penalty of imprisonment (involving compulsory labour) may be imposed upon persons who, by means of speeches, proclamations, writings or emblems, incite others to acts constituting sedition, utter seditious words or speeches, or write, publish, or circulate scurrilous libels against the Government or, by means of printing, lithography or any other means of publication, maliciously publish as news any false news which may endanger the public order or cause damage to the interests or credit of the State; *Syrian Arab Republic* – CEACR, observation, 2010: section 287 of the Penal Code respecting the spreading of exaggerated news tending to harm the prestige of the State. The Government has indicated that draft legislation to exempt persons protected by the Convention from the obligation to perform prison labour is under elaboration and a new draft Penal Code is also being prepared.

<sup>722</sup> See, for example, *Egypt* – CEACR, observation, 2011: section 98(a)bis and 98(d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibits advocacy, by any means, of opposition to the fundamental principles of the socialist system of the State, as well as encouraging aversion or contempt for these principles, subject to penalties of imprisonment involving compulsory labour; sections 98(b), 98(b)bis and 174 of the Penal Code, punishing with similar sanctions advocacy of certain doctrines.

<sup>723</sup> See *Turkey* – CEACR, observation, 2011: sections 80–82, read in conjunction with section 117, of the Political Parties Act, No. 2820 of 22 April 1983, prohibit the following acts (subject to penalties of imprisonment involving compulsory labour): seeking to alter the principle of the unity of the State, claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, seeking to form minorities by protecting and promoting languages and cultures other than the Turkish language and culture, using any language other than Turkish in the drafting and publication of parties’ statutes and programmes, advocating regionalism.

<sup>724</sup> See *Morocco* – CEACR, direct request, 2011: Dahir No. 1-58-378 of 15 November 1958 establishing the Press Code, as amended by Act No. 77-00 of 3 October 2002, contains provisions under which any person who knowingly puts on sale, distributes or reproduces newspapers, journals or periodicals which are detrimental to the Islamic religion, the monarchy, territorial integrity, respect for the King or public order, shall be liable to imprisonment (involving compulsory labour). The Government has expressed its intention to revise the Press Code with a view to abolishing sentences of imprisonment.

considerable element of appreciation to the courts called upon to enforce them, and in respect of which information concerning practical application may therefore be necessary to determine their scope in relation to the application of the Convention. This might be the case of provisions, for example, relating to insults to various holders of public office or punishing the dissemination of false news.<sup>725</sup>

307. Certain political views may also be prohibited, subject to penalties involving compulsory labour, as a consequence of the prohibition of political parties or associations. When a party is prohibited by the legislation, it may result in the adoption of various measures of supervision (covering both public and private meetings and close supervision of persons believed to hold the political opinions in question), which leads to the prohibition in one way or another of the holding or expressing of particular political views, on pain of compulsory labour. A similar situation may arise where administrative authorities enjoy wide discretionary powers to suspend associations, to prevent their creation or to prohibit participation in certain associations for general reasons, such as the national interest or public order, welfare or tranquillity.<sup>726</sup>

## Imposition of forced or compulsory labour for purposes of economic development

308. *Article 1(b)* of the Convention prohibits the use of forced or compulsory labour “as a method of mobilizing and using labour for purposes of economic development”. As the Committee observed in its earlier Surveys, it follows from the terms “mobilizing” and “economic development” that *Article 1(b)* applies only in circumstances where recourse to forced or compulsory labour has a certain quantitative significance and is used for economic ends.<sup>727</sup> This provision of the Convention covers the various forms of forced or compulsory labour for economic ends, whose abolition was already provided for in Convention No. 29 which, at the time of its adoption, had as a principal goal combating forms of forced labour for economic purposes. It should be pointed out that the prohibition laid down in *Article 1(b)* applies even where recourse to forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development is of temporary or exceptional nature, since the Conference declined a proposal to limit the application of this provision to the use of forced labour as a “normal” method of mobilizing and using labour for such purposes.<sup>728</sup> As the Committee noted in its previous General Survey, progress has been achieved during the past few decades in a number of countries in the elimination of provisions imposing compulsory labour for

<sup>725</sup> See, for example, *Benin* – CEACR, observation, 2011: Act No. 60-12 of 30 June 1962 on the freedom of the press, sections 23 and 25; *Philippines* (see footnote 721).

<sup>726</sup> See, for example, *Pakistan* – CEACR, observation, 2011: sections 10–13 of the Security of Pakistan Act, 1952, and sections 2 and 7 of the Political Parties Act, 1962, give the authorities wide discretionary powers to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour. The Government has indicated that proposed amendments to these texts are under consideration; *Uganda* – CEACR, observation, 2011: the Public Order and Security Act, No. 20 of 1967, contains provisions empowering the executive to restrict an individual’s association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour. Sections 54(2)(c), 55, 56 and 56A of the Penal Code empower the minister to declare any combination of two or more persons an unlawful society and thus render any speech, publication or activity on behalf of or in support of such combination illegal and punishable with imprisonment (involving an obligation to perform labour). The Government has indicated that the legislation in question is going to be revised.

<sup>727</sup> General Survey, 2007, para. 167.

<sup>728</sup> *ibid.*

economic purposes.<sup>729</sup> While it is still possible to find some pieces of legislation providing for compulsory mobilization of labour which are remnants of the past, when certain governments, referring to the needs of economic development, resorted to various measures of a compulsory character (such as compulsory assignment or requisition of labour), the governments concerned usually state that such measures are no longer applied in practice and that they intend to change or repeal the legislation in question with a view to bringing it into conformity with the ILO Conventions on forced labour.<sup>730</sup> The Committee has emphasized on numerous occasions that no exceptions to universally recognized human rights should be sought in the name of development.<sup>731</sup>

## Violations of labour discipline punishable with sanctions involving compulsory labour

309. *Article 1(c)* of the Convention prohibits the use of forced or compulsory labour “as a means of labour discipline”. This prohibition covers any measures to ensure the due performance by workers of their service under compulsion of law (in the form of physical constraint or the menace of a penalty), as well as any sanctions for breaches of labour discipline involving compulsory labour. As the Committee observed in its previous General Survey, in the large majority of countries, there exist no legal provisions permitting recourse to forced or compulsory labour as a means of labour discipline, since breaches of labour discipline give rise only to disciplinary sanctions or other kinds of sanctions (for example, sanctions of a monetary character) which do not involve any obligation to perform labour.<sup>732</sup> It may be recalled in this connection that, in so far as labour discipline is concerned, the Convention relates only to forced or compulsory labour (which also includes compulsory prison labour), and consequently it is always possible, without contravening the Convention, to have recourse to other disciplinary penalties.

310. However, compulsory labour as a sanction for breaches of labour discipline is still used under provisions applicable to specific sectors, such as the public service or merchant shipping. Thus, persons employed in the public service are often subjected to special penal provisions aimed at protecting the public interest (for example, provisions punishing abuse of authority by public officials or, in the case of essential services, such as fire and health services or water supply services, provisions punishing certain breaches of discipline which impair or are liable to endanger their proper functioning). In this connection, the Committee has distinguished between penalties imposed to enforce labour discipline as such (and therefore falling within the scope of the Convention) and penalties imposed for the protection of a general public interest, although simultaneously they may punish an act constituting a breach of labour discipline. The Committee has therefore considered that the Convention does not prohibit the imposition of sanctions (even involving compulsory labour) on persons responsible for breaches of labour discipline that impair or are liable to endanger the operation of essential services, or which are committed either in the exercise of functions that are essential to safety or in

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<sup>729</sup> *ibid.*, para. 168.

<sup>730</sup> See paras 282–284 above.

<sup>731</sup> General Survey, 2007, para. 169.

<sup>732</sup> *ibid.*, para. 172.

circumstances where life or health are in danger. Consequently, penal provisions of this kind are not incompatible with the Convention.<sup>733</sup>

311. In certain cases, penal provisions applicable to persons employed in the public service are worded in general terms, broad enough to be likely to fall within the scope of the Convention (e.g. provisions laying down sanctions involving compulsory labour for neglect of duty by public employees).<sup>734</sup> The Committee has pointed out that the compatibility of such provisions with the Convention could be ensured only by limiting their scope to the operation of essential services in the strict sense of the term (that is services, the interruption of which may endanger the life, personal safety or health of the whole or part of the population), or to the exercise of functions which are essential to safety or to circumstances where the life or health of persons are endangered.<sup>735</sup>

312. With regard to merchant shipping, the Committee noted in its previous General Surveys that, in a considerable number of countries, legislation governing the conditions of work of merchant seafarers contained provisions permitting the imposition of penal sanctions involving compulsory labour in respect of various breaches of labour discipline.<sup>736</sup> Here again, the Committee has distinguished between the provisions relating to acts tending to endanger the ship or the life or health of persons, which are not covered by the Convention, and those relating to breaches of labour discipline as such, for example desertion, absence without leave or disobedience, often supplemented by provisions under which seafarers may be forcibly returned on board ship, which fall within the scope of the Convention. In the latter case, the Committee has requested the government concerned to review its legislation concerning conditions of employment of seafarers, if possible in consultation with the shipowners and seafarers in the country, with a view to bringing it into conformity with the Convention.<sup>737</sup> Such action has been undertaken in a considerable number of the countries concerned, frequently within the framework of a more general review of their merchant shipping laws. Since the last General Survey, the Committee has noted with satisfaction that, in a number of cases, provisions imposing penalties of imprisonment (involving an obligation to perform

<sup>733</sup> *ibid.*, para. 175.

<sup>734</sup> See, for example, *Guatemala* – CEACR, observation, 2010: section 419 of the Penal Code; *United Republic of Tanzania* – CEACR, direct request, 2010: section 11 of the First Schedule to the Economic and Organized Crime Control Act, 1984 (“Economic offences”) read in conjunction with section 59(2) of the Act. The Government has indicated that this text is listed among the laws to be addressed by the task force of the current Tanzanian Labour Policy and Legislation Reform, which will make appropriate recommendations to the Government.

<sup>735</sup> General Survey, 2007, para. 176.

<sup>736</sup> *ibid.*, paras 179 and 181.

<sup>737</sup> See, for example, *Benin* – CEACR, observation, 2011 (Merchant Shipping Code of 1968, sections 215, 235 and 238; the Government has stated that a new Merchant Shipping Code has been submitted to the National Assembly for adoption); *Ghana* – CEACR, observation, 2011 (Merchant Shipping Act, 1963, sections 122(2) and 147(1)(b), (c) and (e)); *Jamaica* – CEACR, observation, 2011 (Shipping Act, 1998, sections 178(1)(b), (c) and (e), and 179(a) and (b); the Government has indicated that the amendments of these provisions are under preparation); *Kuwait* – CEACR, observation, 2011 (Legislative Decree No. 31 of 1980 regarding security, order and discipline on board ship, sections 11, 12 and 13); *Liberia* – CEACR, observation, 2010 (Maritime Law, sections 347(1), (2), and 348; *Nigeria* – CEACR, observation, 2010 (Merchant Shipping Act, section 117(b), (c) and (e)); *Pakistan* – CEACR, observation, 2011 (Merchant Shipping Ordinance, 2001 (No. LII of 2001), sections 204 and 206–208); *Papua New Guinea* – CEACR, observation, 2011 (Seamen (Foreign) Act, 1952, sections 1 and 2 (1), (3), (4) and (5); Merchant Shipping Act, Chapter 242 (consolidated as Act No. 67 of 1996), section 161); *Trinidad and Tobago* – CEACR, observation, 2011 (Shipping Act, 1987, sections 157 and 158); *Turkey* – CEACR, observation, 2011 (Commercial Code (Act No. 6762 of 1956), sections 1467 and 1469; the Government has indicated that the new draft Commercial Code submitted to the Grand National Assembly does not contain such provisions).

labour) on seafarers for various breaches of labour discipline, such as desertion, absence without leave or disobedience, have been repealed (*Gabon, Kenya, Saint Vincent and the Grenadines, United Republic of Tanzania*),<sup>738</sup> sometimes together with provisions permitting the forcible return of seafarers on board ship to perform their duties.<sup>739</sup>

## Sanctions involving compulsory labour as a punishment for having participated in strikes

313. *Article 1(d)* of the Convention prohibits recourse to sanctions involving any form of forced or compulsory labour “as a punishment for having participated in strikes”. However, as the Committee observed in previous General Surveys, the Convention does not prohibit the punishment of breaches of public order (acts of violence, assault or destruction of property) committed in connection with the strike; any sanctions (even involving compulsory labour) for offences of this kind obviously fall outside the scope of the Convention.<sup>740</sup> In examining the compatibility of national legislation concerning strikes with *Article 1(d)* of the Convention, where such legislation is enforceable with sanctions which may involve compulsory labour, the Committee has followed the principles developed in the field of freedom of association<sup>741</sup> in ascertaining the specific limits to the right to strike, and in particular the restrictions concerning emergency situations and political strikes. However, it should be kept in mind that the Convention is not an instrument to regulate strikes in general and applies solely to the exaction of forced or compulsory labour in any form, including cases when it is exacted as a sanction for participation in strikes. Where the penalties applicable to offences in relation to participation in strikes take the form of civil or disciplinary sanctions (such as damages or dismissal) and do not involve any obligation to perform labour, the substantive provisions governing these offences fall outside the scope of the Convention.

314. In previous General Surveys, the Committee has referred, in relation to the application of the Convention, to the general prohibition of strikes (enforceable with sanctions involving forced or compulsory labour), as well as to the restrictions on the right to strike relating to the public service and essential services. The Committee has considered that a suspension of the right to strike enforced by sanctions involving compulsory labour is compatible with the Convention only in so far as it is necessary to cope with cases of force majeure in the strict sense of the term – namely, when the existence or well-being of the whole or part of the population is endangered – provided that the duration of the prohibition is limited to the period of immediate necessity.<sup>742</sup> Regarding public servants, the Committee has considered that the prohibition of the right

<sup>738</sup> See *Gabon* – CEACR, 2010 (the Community Merchant Shipping Code, adopted by the Economic and Monetary Community of Central African States (CEMAC) and in force in Gabon, has repealed all national and community provisions inconsistent with the Convention, including the provisions of the 1963 Merchant Shipping Code of Gabon); *Kenya* – CEACR, 2011 (the Merchant Shipping Act of 1967 has been repealed by the Merchant Shipping Act, 2009); *Saint Vincent and the Grenadines* – CEACR, 2010 (the Merchant Shipping Act of 1982 has been repealed by the Shipping Act, 2004); *United Republic of Tanzania* – CEACR, 2010 (the Merchant Shipping Act of 1967 was repealed by the Merchant Shipping Act, 2003 (No. 21)).

<sup>739</sup> *Kenya, United Republic of Tanzania* (see previous footnote).

<sup>740</sup> General Survey, 2007, para. 182.

<sup>741</sup> The Committee has considered, where appropriate, the conclusions reached in the examination of reports on the application of the Conventions dealing with freedom of association and the right to organize, as well as the comments made by other ILO supervisory bodies competent in this field, and primarily the Governing Body Committee on Freedom of Association.

<sup>742</sup> General Survey, 2007, para. 183.

to strike in the public service should be limited to public servants exercising authority in the name of the State. The Committee has also pointed out that, as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.<sup>743</sup>

315. *However, in its previous General Survey, the Committee recalled the importance it attaches to the general principle that, in all cases and regardless of the legality of the strike action in question, any sanctions imposed should not be disproportionate to the seriousness of the violations committed.*<sup>744</sup> It has referred in this connection to the Governing Body Committee on Freedom of Association, which has pointed out that “all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike”.<sup>745</sup> *On a number of occasions the Committee has asked the governments concerned to take the necessary measures in order to ensure, both in legislation and in practice, that no sanctions involving compulsory labour can be imposed for the mere fact of organizing or peacefully participating in strikes.*<sup>746</sup> Since the previous General Survey, the Committee has noted with satisfaction the repeal of penal provisions punishing the organization or participation in strikes with penalties of imprisonment (involving compulsory prison labour) (Cyprus, Kenya, Kiribati, Mauritius).<sup>747</sup>

<sup>743</sup> See paras 129 and 131 above.

<sup>744</sup> General Survey, 2007, para. 189.

<sup>745</sup> See *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva, ILO, fifth (revised) edition, 2006, para. 668. See also para. 158 above.

<sup>746</sup> See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Egypt* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2011; *Zimbabwe* – CEACR, observation, 2011.

<sup>747</sup> See *Cyprus* – CEACR, observation, 2009 (Order No. 366/2006 repealed sections 79A and 79B of the Defence Regulations, which granted the Council of Ministers discretionary power to prohibit strikes in the services considered to be essential subject to penalties of imprisonment involving compulsory labour); *Kenya* – CEACR, observation, 2011 (the Labour Relations Act, 2007, repealed the Trade Disputes Act (Cap. 234), under which sentences of imprisonment (involving compulsory labour) could be imposed for participating in strikes); *Kiribati* – CEACR, observation, 2011 (the Industrial Relations Code (Amendment) Act, 2008, repealed the provisions in sections 30 and 37 of the Industrial Relations Code, under which sanctions of imprisonment (involving compulsory prison labour) could be imposed against unlawful strikes); *Mauritius* – CEACR, observation, 2010 (the Employment Relations Act, 2008, repealed the Industrial Relations Act, 1973, which contained provisions punishing participation in strikes that violated compulsory arbitration procedures with sentences of imprisonment involving compulsory prison labour).

## Imposition of forced or compulsory labour as a means of racial, social, national or religious discrimination

316. *Article 1(e)* of the Convention prohibits the use of any form of forced or compulsory labour “as a means of racial, social, national or religious discrimination”. This provision requires the abolition of any discriminatory distinctions made on the above grounds in exacting labour for the purpose of production or service. Thus, in the case of a punishment involving compulsory labour, where such punishment is meted out more severely to certain groups defined in racial, social, national or religious terms, this situation falls within the scope of the Convention, even where the offence giving rise to the punishment is a common offence which does not otherwise come under the protection of *Article 1(a), (c) or (d)* of the Convention.<sup>748</sup> It should be kept in mind, however, that the Convention does not deal with the substance of the problem of discrimination on the above grounds;<sup>749</sup> its purpose is limited to the suppression of forced or compulsory labour as a means of discrimination. Instances in which legislation allows the imposition of forced or compulsory labour, including sanctions involving compulsory labour as a means of discrimination appear to be extremely rare, since there is a comprehensive body of constitutional and legislative guarantees of equality of citizens. However, in its previous General Surveys, the Committee noted a few cases in which certain forms of forced labour affected only particular groups or in which compulsory labour was used to punish the violation of discriminatory legal provisions; it has noted the repeal of some provisions of this kind.<sup>750</sup>

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<sup>748</sup> General Survey, 2007, para. 190.

<sup>749</sup> For the substantial issues of discrimination, see Part V of this Survey.

<sup>750</sup> General Survey, 2007, para. 191.



## Chapter 5

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### Law enforcement

317. By ratifying the forced labour Conventions, States are under an obligation not to engage in certain types of action and to adopt certain measures. The obligation not to engage in certain types of action consists of their commitment not to have recourse to constraint, even imposed by law, to exact from the population any work or service covered by the definition of forced labour. They are under the obligation to adopt measures, in both law and practice, with a view to ensuring that no form of forced labour is tolerated on their territory. In this respect, *Article 25* of Convention No. 29 provides that the “illegal exaction of forced or compulsory labour shall be punishable as a penal offence” and that it shall be an obligation on any Member ratifying the Convention “to ensure that the penalties imposed by law are really adequate and are strictly enforced”.

318. If effective penal sanctions are to be strictly enforced upon persons who exact forced labour, several elements are necessary in terms of legislation and law enforcement. As the Committee explained in its 2007 General Survey, the public authorities have to ensure that “the national legal framework establishes penal sanctions for practices pertaining to forced labour, and whether those provisions can be applied easily in practice by the courts to punish those responsible for such acts”.<sup>751</sup>

### Penal sanctions

319. With regard to legislation, the first challenge is to ensure that the prohibition of the use of forced labour in general, or of specific practices which constitute forced labour, is accompanied by effective penal sanctions. The prohibition of practices pertaining to forced labour may be directly set out in the Constitution, or provided for in labour law, penal law, or in texts prohibiting a specific form of forced labour. However, it may be the case that these texts do not establish penalties that are applicable in the event of violations of the prohibition of forced labour, particularly in the case of constitutions, or they may establish sanctions that are not penal, as required by *Article 25* of Convention No. 29. The Committee has noted in several cases that, in the absence of other applicable penal provisions, the penalties envisaged in the labour legislation for the prohibition of forced labour consist in general terms of administrative sanctions which, in view of their nature and level, do not give effect to *Article 25* of the Convention. They are not generally of the required penal nature, and do not fulfil their dissuasive function. The Committee has emphasized, for example, when the envisaged sanction consists of a fine or a very short prison sentence, that even though the sanction corresponds to the highest level of penalties established by the Labour Code, it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to

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<sup>751</sup> General Survey, 2007, paras 135–140.

be dissuasive.<sup>752</sup> In such cases, the Committee requests the governments concerned to adopt adequate measures to remedy the situation.

320. Moreover, to ensure that effective penal sanctions can be imposed by the competent courts, it is necessary for the punishable offence to be defined precisely. A general prohibition of recourse to forced labour or general provisions on the freedom of work may not suffice for the conviction of persons who exact forced labour. In certain circumstances, it is preferable for the constituent elements of the prohibited or punishable practice to be defined precisely in law and to be adapted to national circumstances. The Committee has emphasized in this respect that, bearing in mind the principle of the strict interpretation of penal law, it is important to ensure that precise provisions are available for the investigatory authorities and the courts so that they can determine the facts easily and, where appropriate, initiate prosecutions.<sup>753</sup>

## Law enforcement bodies

321. The effective implementation of the prohibition of forced labour also requires the sanctions envisaged by law to be “strictly enforced”. For this purpose, the State has to ensure that the authorities responsible for enforcing the application of the law are in a position to fulfil their functions. In the first place, this involves the public authorities being able to identify violations of the prohibition of using any form of forced labour. Labour inspection plays an essential role in this respect in view of its mission to supervise the application of labour legislation and identify violations. Indeed, as the Committee has emphasized, the accumulation of certain violations of labour law may be an indicator of forced labour. In the great majority of cases, forced labour is characterized by several simultaneous violations of labour law, each of which must be penalized as such. Taken together, these labour law violations constitute the criminal offence of “forced labour”, which in itself gives rise to specific penalties. The Committee therefore regularly emphasizes the importance of allocating adequate human and material resources to the labour inspection services so that they are able to carry out their functions. In particular, they should be able to travel rapidly, effectively and safely over the whole of the national territory, including in remote areas where workers are more likely to be exploited. Certain countries have established units in the labour inspectorate with special responsibility for combating certain forms of forced labour. The Committee has noted in this respect that inspections by these special units not only result in the release of workers from situations of forced labour, but also provide the judicial authorities with documents that serve as a basis for the prosecution of those responsible for such practices.<sup>754</sup>

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<sup>752</sup> For example, *Morocco* – CEACR, observation, 2011: section 12 of the Labour Code provides for a fine, and in the case of repeated offences, a fine and imprisonment of between six days and three months, or one of these two penalties, for persons who requisition employees to perform forced labour or to work against their will.

<sup>753</sup> See, for example, *Peru* – CEACR, observation, 2011.

<sup>754</sup> See, for example, *Brazil* – CEACR, observation, 2010: the Committee noted the essential role played by the Special Mobile Inspection Group, which is composed of labour inspectors, officers of the federal police and public prosecutors of the Ministry of Labour; *Peru* – CEACR, observation, 2011: the recent creation of the Special Labour Inspection Group against Forced Labour; *Spain* – the Government indicates in its report under article 19 of the Constitution that in 2010 a special group was established within the Tripartite Advisory Commission of the Labour and Social Security Inspectorate with responsibility for proposing measures and evaluating the action of the labour inspection services in relation specifically to violations of the labour legislation in the “irregular economy” and the resulting exploitation of labour, including through human trafficking networks.

322. Furthermore, in view of the fact that the labour inspectorate does not cover all the sectors in which a large number of forced labour practices are encountered, and as they are penal offences, the police authorities are also essential elements in identifying and combating these practices. The Committee has emphasized the joint role of the forces of order and the investigatory authorities in conducting rapid, effective and impartial investigations and, where appropriate, initiating prosecutions against those responsible for violations. It should be recalled in this respect that the victims of forced labour are often from the most vulnerable categories of workers, who encounter greater difficulty in denouncing their situation. This is particularly the case of *migrant workers*, for whom their regular or irregular situation on the national territory may have an impact on their ability to turn to the competent authorities. The same applies to *domestic workers*, who often perform “hidden” work and may be subject to restrictions on their freedom of movement. Certain States have adopted interesting legislative provisions with a view to overcoming the difficulties that may be encountered by victims in gaining access to justice, for example by allowing human rights associations to denounce violations and assist victims throughout judicial procedures,<sup>755</sup> affording victims special protection or a temporary residence permit for those in an irregular situation,<sup>756</sup> or establishing sanctions against authorities which do not follow up denunciations that are brought to their knowledge.<sup>757</sup> The Committee has considered that the lack of prosecutions by victims may reveal ignorance of the remedies available, fear of social reprobation or reprisals, or a lack of will by the authorities responsible for prosecution.

323. With a view to ensuring that States give full effect in practice to *Article 25* of Convention No. 29 and that, accordingly, the courts apply effective sanctions strictly against persons who exact forced labour, the Committee places emphasis on obtaining information, and particularly statistical data on the judicial proceedings initiated and the nature of the sanctions imposed by the courts.<sup>758</sup> This is done to ensure that those responsible for these practices are convicted of criminal offences and that the dissuasive nature of the penalties imposed contributes to bringing an end to such practices, so as to avoid creating a climate of impunity. In this regard, the Committee considers that sentences of imprisonment which deprive persons exacting forced labour of their freedom are of significant symbolic value. Furthermore, in view of the profit made from exploiting the labour of others, even if only as a result of underpaying those who are forced to work,<sup>759</sup> it would also appear to be important, in addition to imposing penal sanctions, for economic pressure to be exerted on those who exploit work by others. This economic pressure can take various forms: obstacles to the marketing of products;

<sup>755</sup> See, for example, *Niger* – CEACR, observation, 2010: in accordance with section 270(5) of the Penal Code, associations established for the purpose of combating slavery or similar practices are authorized to initiate civil actions for damages caused by violations of the penal legislation on slavery.

<sup>756</sup> A large number of countries which have adopted legislation to suppress human trafficking have included provisions encouraging victims to participate in judicial proceedings. Countries such as *Belgium*, *Luxembourg* and *Portugal* establish reflection periods or grant victims residence permits (see CEACR, direct requests, 2009 and 2010).

<sup>757</sup> See, for example, *Mauritania* – CEACR, observation, 2010: in accordance with section 12 of Act No. 2007/48 criminalizing and repressing slave-like practices, *Walis*, *Hakems*, local chiefs and officers of the criminal investigation police who do not follow up denunciations of slave-like practices brought to their knowledge shall be liable to imprisonment and a fine.

<sup>758</sup> The Committee has been provided with quantitative information or statistics on this subject, for example, from the following countries: *Benin* – CEACR, direct request, 2010; *El Salvador* – CEACR, direct request, 2012; *Italy* – CEACR, direct request, 2010; *Romania* – CEACR, direct request, 2010; and *Thailand* – CEACR, observation, 2012.

<sup>759</sup> See, in this respect, *The cost of coercion*, op. cit., paras 145–150 on the economics of forced labour.

making it impossible to gain access to subsidies and public financing; and the payment of fines and substantial compensation. Obliging persons who have recourse to forced labour to compensate the damage suffered by victims means that financial pressure can be exerted on those who are in violation and the unlawful activity becomes less profitable, which accordingly contributes to dissuading those who might be tempted to exploit the labour of others.

## Protection of victims

324. Moreover, compensation for the material and moral damages suffered makes it possible for victims to reconstruct their lives outside the framework of dependence in which they have lived. The procedures for obtaining compensation are not always easy for victims, as they sometimes involve civil action, in addition to criminal proceedings. The Committee has noted in this respect the example of a country in which the labour courts, as a result of action by the Ministry of Labour, also require the reimbursement of wage arrears and impose fines and the payment of compensation for the damage suffered by the victim, as well as for the “collective moral damage” suffered by society.<sup>760</sup> It should also be noted that the law may empower criminal courts which find a person guilty of exacting forced labour to set the amount of compensation to be paid to the victim.<sup>761</sup>

325. The Committee has emphasized on numerous occasions that it is essential to provide material and financial support to victims so as to prevent them falling back into a situation of vulnerability in which they would be likely to be exploited once again. In this connection, the legislation in many countries envisages the establishment of support programmes and measures and the reintegration of victims, not only for the victims of trafficking, as required by the Palermo Protocol, but also for the victims of other forced labour practices. The Committee regularly requests governments to provide information on the implementation of these programmes, which often encounter operational difficulties.<sup>762</sup> The Committee has also emphasized that victims of forced labour, whether in the form of labour exploitation through abuse of vulnerability or trafficking in persons, should, regardless of their status within the national territory, receive adequate protection in order to guarantee the full enjoyment of all their rights before the national authorities, including labour rights (wage arrears, social protection, etc.) and compensation for material and moral damages, as well as to ensure the punishment of perpetrators.<sup>763</sup>

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<sup>760</sup> See *Brazil* – CEACR, observations, 2008 and 2010: the Committee has noted many court decisions requiring compensation for collective moral damages, which have reached record amounts, and the fact that the Government considers that large fines and compensation are highly effective as they undermine the financial profits gained from the use of slave labour.

<sup>761</sup> See *Mexico* – CEACR, observation, 2010: in accordance with section 9 of the Act of 2007 to prevent and suppress trafficking in persons, where a convict has been found penally responsible for the crime of trafficking in persons, the courts also have to order the payment of compensation for the damages suffered by the victim. The Regulations of the Act provide that the public prosecutor shall seek and compile sufficient evidence to justify and quantify the level of compensation.

<sup>762</sup> See, for example, *India* – CEACR, observation, 2010.

<sup>763</sup> Measures taken to assist victims include: granting of temporary residence permits (for example, *Chile* – CEACR, direct request 2012); assistance services at diplomatic missions abroad to protect workers and their rights in destination countries (for example, *Indonesia* – CEACR, observation, 2012); establishment of telephone help-lines providing support and judicial guidance (for example, *Portugal* – CEACR, direct request, 2009).

326. *In conclusion, with a view to bringing an end to forced labour practices, it is indispensable for the legislation to define precisely the constituent components of the practice that is to be repressed and to establish really dissuasive penal sanctions. Moreover, as the vulnerability of the great majority of victims of forced labour has an impact on the extent to which they are able to assert their rights, States have to make every effort to ensure that the labour inspection services, the forces of order and the judicial authorities are provided with the necessary resources to identify forced labour practices, bring such practices to an end, prosecute those responsible, impose administrative, penal and economic sanctions that are commensurate with the seriousness of the violation and, finally, ensure that the victims are compensated for the damages they have suffered.*

## Part IV. Elimination of child labour

### Chapter 1

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

##### Introduction

327. Since the ILO's inception, the elimination of child labour has been a preoccupation of the Organization. The issue has emerged increasingly as a key concern for both developed and developing countries. Establishing a minimum age for admission to employment or work is crucial in that it sets at least a basic minimum threshold for child protection. This is closely intertwined with the other rights addressed by this Survey. In particular, it is reinforced by freedom of association and collective bargaining which provide space for participation and mobilization against child exploitation. Child labour may also be dealt with under the heading of forced labour, as there is a need to protect children from such exploitation. Moreover, the protection of children in such situations is based on the need to respect and implement the principles of non-discrimination and equality in favour of all children irrespective of their origins.

328. Experience shows that where child labour is practised, respect for other human rights at work is weak. The most recent Global Report on child labour of June 2010<sup>764</sup> highlights that, while child labour continues to decline globally, there remain 215 million children caught in child labour.<sup>765</sup> The continued existence of child labour is a significant indicator of major gaps in decent work. Ensuring that every child is free of the compulsion to work and has access to quality education is thus a crucial first step towards achieving decent work for the most vulnerable in society.

329. At the international level, action to combat the economic exploitation of children began in earnest with the creation of the ILO. At the very first session of the International Labour Conference (ILC) in 1919, the delegates of governments and of employers' and workers' organizations, aware of the need to protect children against economic exploitation, adopted the first ILO standard regulating the minimum age in industry.<sup>766</sup> Prior to the adoption of Convention No. 138, the ILO instruments on the

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<sup>764</sup> *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 99th Session, Geneva, 2010, para. 19.

<sup>765</sup> These children are either under the minimum age for work or above that age and engaged in work that poses a threat to their health, safety or morals, or are subject to conditions of forced labour. This does not include young persons engaged in economic activities which are permitted by the Convention (work permitted by the Convention does not constitute "child labour"). The experience of the ILO has shown that not all forms of work are necessarily harmful to children, and that when appropriately regulated, certain forms of activity are permitted. This is the underlying reason for a number of the provisions of Convention No. 138 authorizing permissible work by children below the specified minimum age.

<sup>766</sup> Minimum Age (Industry) Convention, 1919 (No. 5).

minimum age for admission to employment or work only addressed specific sectors.<sup>767</sup> This sectoral approach had advantages, but remained a piecemeal approach to regulating the work of young persons. A new instrument was therefore developed for concerted international action to promote the well-being of children in all sectors. In order to enable a greater number of member States to ratify it, this new Convention needed to be applicable to all sectors and be adaptable to unique national situations. In this spirit, the Convention was adopted in 1973, and has since achieved near universal ratification.

330. The primary objective of Convention No. 138 is the pursuit of a “national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work [...]”.<sup>768</sup> Moreover, the Convention aims to protect children’s ability to attend school as well as to regulate the types of economic activity which are permissible for them (and the appropriate conditions for such work), and to protect their health, safety and morals. This Convention, together with the Worst Forms of Child Labour Convention, 1999 (No. 182), constitute the most authoritative international normative framework for the elimination of child labour. The emphasis placed by both Conventions on the abolition of child labour reflects the conviction of the ILO’s constituents that childhood is a period of life which should not be devoted to work, but to the full physical and mental development of children.

331. The only General Survey related to this Convention was undertaken in 1981, when 23 member States had ratified the Convention. This number has since increased sevenfold and there have been major changes in the worldwide approach to child labour in the last 30 years due to, inter alia, improved welfare and education systems, the development of an international framework on the rights of the child, the founding and operation of the International Programme on the Elimination of Child Labour (ILO–IPEC),<sup>769</sup> increased global awareness regarding child labour, globalization and the recent global financial crisis. This chapter will examine the significant developments in the application of the Convention in both law and practice, as well as the Convention’s complementary relationship with Convention No. 182 and the other fundamental Conventions.

## Scope of the Convention and methods of application

### Scope of application

332. In general, Convention No. 138 applies to all sectors of economic activity and covers all forms of employment or work. The minimum age for admission to employment or work established by ratifying States (pursuant to *Article 2(1)*) should therefore apply to all persons engaged in economic activity, whether or not there is a contractual employment relationship and whether or not the work is remunerated, including unpaid work and work in the informal economy. This includes workers in family enterprises and farms, domestic workers, agricultural workers and self-employed workers.

<sup>767</sup> These sectors were industry, maritime work, non-industrial work and underground work.

<sup>768</sup> *Art. 1* of the Convention.

<sup>769</sup> A large-scale ILO technical cooperation programme launched in 1992, which operates in 92 countries.

333. However, the Convention was initially conceived as a flexible instrument “aimed not only at setting a basic standard, but also at promoting the progressive elimination of child labour”.<sup>770</sup> In this vein, member States may have recourse to the flexibility clauses contained in the Convention. *Articles 4 and 5* of the Convention permit countries to exclude certain limited categories of workers or particular economic sectors from the scope of the Convention, allowing a government to adapt the Convention to a particular national context.

334. *Article 4* allows the competent authority (in so far as necessary), after consultation with organizations of employers and workers,<sup>771</sup> to exclude from the application of the Convention limited categories of employment or work in respect of which special and substantial problems of application arise.<sup>772</sup> With a view to leaving a certain latitude to each country to adapt the application of the Convention to its national situation, the Convention does not enumerate the categories of employment or work which may be covered by such an exclusion.<sup>773</sup> However, this cannot include types of employment determined as likely to jeopardize the health, safety or morals of young persons.<sup>774</sup> Ratifying Members must list (in their first report<sup>775</sup> submitted on the application of the Convention under article 22 of the ILO Constitution) the categories which have been excluded, and give the reasons for the exclusion. Some countries have also declared an intention for this limitation in the scope of application to apply only for a certain period of time.<sup>776</sup> In subsequent reports submitted under article 22 of the Constitution, Members should state the position of their law and practice in respect of the categories excluded and the extent to which effect has been given to the Convention with respect to these excluded categories.<sup>777</sup> The most frequently excluded limited categories of work are: work in family enterprises,<sup>778</sup> work carried out in small-scale agriculture<sup>779</sup> and

<sup>770</sup> *Minimum age for admission to employment*, Report IV(2), ILC, 58th Session, Geneva, 1973, p. 7.

<sup>771</sup> The importance of consultation with the social partners has been emphasized by the Committee. See, for example, *Cambodia* – CEACR, direct request, 2010; *Egypt* – CEACR, direct request, 2002; *Lesotho* – CEACR, direct request, 2004; and *Syrian Arab Republic* – CEACR, direct request, 2004.

<sup>772</sup> *Art. 4(1)* of the Convention.

<sup>773</sup> *Minimum age*, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146, concerning minimum age, Report of the CEACR, Report III (Part 4B), ILC, 67th Session, Geneva, 1981, para. 74.

<sup>774</sup> *Arts 3 and 4(3)* of the Convention. See for example, *Egypt* – CEACR, direct request, 2004.

<sup>775</sup> Excluding particular categories of work subsequent to the first report is not possible under *Art. 4*. See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2003; and *Republic of Korea* – CEACR, direct request, 2008. However, in cases where it is not clear from the Government’s first report as to whether it intended to exclude limited categories of work, the Committee has asked the Government to clarify if it intended to avail itself of *Art. 4*. This has occurred particularly in cases where the legislation implementing the Convention excludes particular categories. See, for example, *Gambia* – CEACR, direct request, 2009; *Papua New Guinea* – CEACR, direct request, 2009; and *Pakistan* – CEACR, direct request, 2009.

<sup>776</sup> See, for example, *Bahamas* – CEACR, direct request, 2004. The Committee noted the Government’s indication that it intended to exclude from the scope of application of the Convention five types of work (grocery packers, gift wrappers, peanut vendors, newspaper vendors and work in films) for a period of five years.

<sup>777</sup> *Art. 4(2)* of the Convention.

<sup>778</sup> See, for example, *Barbados* – CEACR, direct request, 2010; *Egypt* – CEACR, direct request, 2004; *Fiji* – CEACR, direct request, 2005; *Iceland* – CEACR, direct request, 2003; *Japan* – CEACR, direct request, 2004; *Lesotho* – CEACR, direct request, 2006; *Philippines* – CEACR, direct request, 2004; *Syrian Arab Republic* – CEACR, direct request, 2004; and *Trinidad and Tobago* – CEACR, direct request, 2010. Some States which have not ratified the Convention have also indicated that the relevant minimum age provisions do not apply to family enterprises. The Governments of Australia and Canada both indicated in their reports submitted under art. 19 of the ILO Constitution that a number of jurisdictions in each country allow children under the minimum age to be employed in family enterprises.



domestic work.<sup>780</sup> In line with the goal of progressive improvement in the application of the Convention, the Committee has noted with satisfaction when countries have adopted legislation applying the Convention to previously excluded categories.<sup>781</sup>

335. While *Article 4* allows exceptions for limited categories of employment or work, *Article 5* permits the exclusion of entire economic sectors. In particular, *Article 5* allows a Member whose economy and administrative facilities are insufficiently developed, to initially limit the scope of application of the Convention, following consultation with the organizations of employers and workers concerned.<sup>782</sup> Unlike *Article 4*, where the exclusion of limited categories is outlined in the government's first report, each Member which avails itself of the flexibility clause contained in *Article 5(1)* shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention. Ratifying States must, at a minimum, apply the Convention to: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.<sup>783</sup> Several countries have limited the Convention's application to these categories only.<sup>784</sup> Professions from these sectors also cannot be excluded through *Article 4*.<sup>785</sup>

336. The Committee has emphasized on several occasions that this flexibility clause, used to limit the scope of application, can only be used at the time of ratification, and may not be invoked subsequently.<sup>786</sup> However, Members may formally extend the scope of application by a declaration addressed to the Director-General.<sup>787</sup> Similarly to *Article 4*, governments who avail themselves of *Article 5* must, in subsequent reports submitted under article 22 of the ILO Constitution, indicate the general position regarding the employment or work of young persons and children in the excluded branches of activity, in addition to any progress made towards the wider application of the provisions of the Convention.<sup>788</sup>

<sup>779</sup> See, for example, *Egypt* – CEACR, direct request, 2004; and *Ethiopia* – CEACR, direct request, 2009.

<sup>780</sup> See, for example, *Cambodia* – CEACR, direct request, 2010; *Iceland* – CEACR, direct request, 2003; and *Japan* – CEACR, direct request, 2004.

<sup>781</sup> See, for example, *Sweden* – CEACR, observation, 1997; and *Turkey* – CEACR, observation, 2009. The Committee has also noted such developments with interest. See, for example, *Fiji* – CEACR, direct request, 2008; and *Papua New Guinea* – CEACR, direct request, 2007.

<sup>782</sup> *Art. 5(1)*.

<sup>783</sup> *Art. 5(2) and (3)*.

<sup>784</sup> See, for example, *Angola* – CEACR, direct request, 2005; *Brazil* – CEACR, direct request, 2004; *Cameroon* – CEACR, observation, 2009; *Dominican Republic* – CEACR, direct request, 2003; *Gambia* – CEACR, direct request, 2009; *Lao People's Democratic Republic* – CEACR, direct request, 2009; *Mauritania* – CEACR, direct request, 2009; *Panama* – CEACR, direct request, 2005; *United Republic of Tanzania* – CEACR, direct request, 2005; *Thailand* – CEACR, direct request, 2007; and *Tunisia* – CEACR, direct request, 2003.

<sup>785</sup> See, for example, *Turkey* – CEACR, observation, 2006.

<sup>786</sup> See, for example, *Equatorial Guinea* – CEACR, direct request, 2010.

<sup>787</sup> *Art. 5(4)(b)* states that any Member which has limited the scope of application pursuant to *Art. 5*, may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office. In cases where the implementing legislation appears to cover sectors that have been excluded, the Committee has drawn the government's attention to the possibility envisaged in *Art. 5(4)(b)*. See for example, *Brazil* – CEACR, direct request, 2004; *Thailand* – CEACR, direct request, 2007; and *Viet Nam* – CEACR, direct request, 2004.

<sup>788</sup> *Art. 5(4)(a)*.

## Methods of application

337. Convention No. 138 is applied by a combination of policy, legislative and programmatic measures. The application of the Convention through policy is rooted primarily in *Article 1* of the Convention, which states that each country in which the Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour. Between 1999 and 2009, approximately 70 countries formulated a national policy on child labour,<sup>789</sup> and the Committee has continuously emphasized the importance of developing such a national policy for the application of the Convention.<sup>790</sup> These national policies are then pursued through the development and implementation of national plans of action, national programmes and national strategies on child labour.<sup>791</sup> In some countries, policies to combat child labour are incorporated into broader policies and programmes on children<sup>792</sup> or Decent Work Country Programmes.<sup>793</sup>

338. The Convention may be applied through domestic legislation governing a variety of topics. The provisions stipulating the minimum age for admission to employment or work are, in the large majority of countries, found in the member State's primary piece of labour legislation, most frequently the labour code.<sup>794</sup> However, some countries have enacted specific legislation governing the employment of young persons<sup>795</sup> and, in some countries, the provisions governing the minimum age are contained in child protection legislation.<sup>796</sup> In some countries, the legislative provisions governing the minimum age are contained in the national constitution.<sup>797</sup> An essential component of Convention No. 138 is linking the minimum age for admission to work with the age of completion of compulsory education, and therefore education acts and other legislation governing compulsory education are also key methods of applying the Convention.<sup>798</sup> Additional pieces of legislation which apply the Convention include regulations governing

<sup>789</sup> *Accelerating action against child labour*, op. cit., fig. 1.10.

<sup>790</sup> See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2008; *Central African Republic* – CEACR, observation, 2010; and *Chad* – CEACR, direct request, 2010.

<sup>791</sup> Recent examples of the implementation of national plans of action or programmes to address child labour include: *Brazil* – CEACR, observation, 2010; *Egypt* – CEACR, observation, 2010; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Madagascar* – CEACR, observation, 2010; *Nicaragua* – CEACR, observation, 2010; and *South Africa* – CEACR, direct request, 2009.

<sup>792</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Mongolia* – CEACR, observation, 2010; *Morocco*, CEACR, observation, 2010; *Sri Lanka* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

<sup>793</sup> See, for example, *El Salvador* – CEACR, observation, 2009; *Honduras* – CEACR, observation, 2009; and *Nicaragua* – CEACR, observation, 2010.

<sup>794</sup> See, for example, *Chad* – CEACR, direct request, 2009; *Republic of Moldova* – CEACR, direct request, 2009; *Oman* – CEACR, direct request, 2005; and *Viet Nam* – CEACR, direct request, 2005.

<sup>795</sup> See, for example, *Ireland* – CEACR, direct request, 1997 (the Protection of Young Persons (Employment) Act); *Pakistan* – CEACR, direct request, 2010 (the Employment of Children Act); and *Trinidad and Tobago* – CEACR, direct request, 2008 (the Miscellaneous Provisions (Minimum Age for Admission to Employment) Act).

<sup>796</sup> See, for example, *Jamaica* – CEACR, direct request, 2006 (Child Care and Protection Act); and *Bolivarian Republic of Venezuela* – CEACR, direct request, 1993 (the Protection of Children Act).

<sup>797</sup> See, for example, *Romania* – CEACR, direct request, 1992; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2010.

<sup>798</sup> See, for example, *Angola* – CEACR, direct request, 2010; *Barbados* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; *Paraguay* – CEACR, direct request, 2009; *Seychelles* – CEACR, direct request, 2009; *Singapore* – CEACR, direct request, 2009; and *Thailand* – CEACR, direct request, 2011.

hazardous work,<sup>799</sup> regulations governing apprenticeships and vocational training,<sup>800</sup> regulations concerning artistic performances<sup>801</sup> and regulations on employers' registers.<sup>802</sup>

### Difficulties of application concerning the scope

339. The Committee has consistently reminded governments that the Convention applies to all branches of economic activity and covers all kinds of employment or work. However, in many countries, the legislation giving effect to the Convention (containing provisions establishing the minimum age for admission to work) applies only to formal labour relationships between an employer and an employee, meaning that children working outside a formal labour relationship are excluded from the provisions giving effect to the Convention. This includes children working on their own account, in the informal economy or on an unpaid basis.<sup>803</sup> In some countries, although the legislation giving effect to the Convention explicitly excluded family work, domestic work and agricultural work,<sup>804</sup> these categories of work were not initially excluded by the member State under *Article 4*. These exclusions are particularly significant as, in many countries, the very activities not covered by the legislation are those in which the majority of economically active children under the minimum age are engaged. Globally, only 21 per cent of child labourers aged 5–17 are engaged in paid employment.<sup>805</sup> Two-thirds of child labourers in the age group 5–17 years old are unpaid family workers and another 5 per cent of children in this age group perform work on their own account. Moreover, the sectors which are most often excluded from the legislation implementing the Convention are often particularly difficult to monitor through labour inspection,<sup>806</sup> meaning that children working in these sectors have little protection. As the Convention applies to all working children, the Committee has frequently made recommendations to assist the concerned countries in overcoming such gaps in application.

<sup>799</sup> *Art. 3* of the Convention. See paras 376–387 below.

<sup>800</sup> Pursuant to *Art. 6* of the Convention. See, for example, *Jordan* – CEACR, direct request, 2005; and *Papua New Guinea* – CEACR, direct request, 2006.

<sup>801</sup> Pursuant to *Art. 8* of the Convention. See, for example, *Iceland* – CEACR, direct request, 2011; and *Latvia* – CEACR, direct request, 2009.

<sup>802</sup> Pursuant to *Art. 9(3)* of the Convention. See, for example, *Belarus* – CEACR, direct request, 2011; and *Bosnia and Herzegovina* – CEACR, direct request, 2009.

<sup>803</sup> See, for example, *Burundi* – CEACR, observation, 2010; *Chile* – CEACR, direct request, 2011; *Comoros* – CEACR, direct request, 2010; *Ethiopia* – CEACR, observation, 2010; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; and *Russian Federation* – CEACR, observation 2010.

<sup>804</sup> See also the sections on family workers, domestic workers (paras 356–361) and child labour in agriculture (paras 349–355).

<sup>805</sup> *Accelerating action against child labour*, op. cit., para. 37.

<sup>806</sup> *Labour inspection*, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 95th Session, Geneva, 2006, pp. 17 and 85.

## Thematic issues

### Child labour in the informal economy

340. *In many countries, the legislation giving effect to the Convention does not include the informal economy.*<sup>807</sup> *However, this sector has been identified as one of the areas in which child labour is most prevalent.*<sup>808</sup> *It represents 52.2 per cent of total employment in Latin America, 78.2 per cent in Asia and 55.7 per cent in Africa*<sup>809</sup> *and will continue to grow during times of economic crisis.*<sup>810</sup> *Moreover, many governments*<sup>811</sup> *and social partners*<sup>812</sup> *have identified combating child labour in the informal economy as one of the biggest challenges faced in the application of the Convention. Therefore, the Committee considers that addressing the issue of child labour in the informal economy, in both rural and urban areas, is essential to the application of the Convention.*

### *Legislative measures addressing child labour in the informal economy*

341. Governments have taken various measures to ensure that the protection afforded by the Convention is enjoyed by children working in the informal economy. In cases where the general labour legislation excludes workers in the informal economy from its scope of application, this legislation may be amended to specifically stipulate that these exclusions do not apply to the provisions governing the work of children. For example, in *Kenya*, the Committee noted with satisfaction that the Employment Act of 2007 (which replaced legislation with a limited scope of application) extends the application of the minimum age for admission to employment to all undertakings.<sup>813</sup> Countries may also adopt specific regulations to govern the informal economy, as was done in *Spain*, where the Committee noted with satisfaction that pursuant to Statute 20/2007 on self-employed workers, children under 16 years may not work on a self-employed basis or be engaged in a professional activity, even within their own families.<sup>814</sup> Addressing this gap can also be accomplished through regulations specifically aimed at working children. This was done in *Argentina*, where the Committee noted with satisfaction that Act No. 26.390 of 25 June 2008 on the prohibition of child labour and protection of young workers provides that work involving children under 16 years of age is prohibited in all

<sup>807</sup> The term “informal economy” comprises all economic activities that are – in law or practice – not covered or insufficiently covered by formal arrangements, in different sectors of the economy and across rural and urban contexts, including wage workers and own-account workers, contributing family members and those moving from one situation to another. See *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO’s supervisory bodies related to the informal economy*, ILO (Geneva, 2010), p. 13 [hereinafter *Digest on the informal economy*].

<sup>808</sup> *Accelerating action against child labour*, op. cit., paras 246 and 385.

<sup>809</sup> *Digest on the informal economy*, op. cit., p. 5.

<sup>810</sup> *Tackling the global jobs crisis: Recovery through decent work policies*, Report of the Director-General, ILC, 98th Session, Geneva, 2009, para. 24.

<sup>811</sup> See, for example, *Central African Republic* – CEACR, observation, 2010; *Nepal* – CEACR, direct request, 2010; and *Russian Federation* – CEACR, observation, 2010. In addition, the Government of Bangladesh, indicated in its report supplied under art. 19 of the ILO Constitution that child labour occurs in the informal economy.

<sup>812</sup> See, for example, *Albania* – CEACR, observation, 2011; *Burundi* – CEACR, observation, 2008; *Indonesia*, – CEACR, observation, 2009; and *Senegal* – CEACR, observation, 2011.

<sup>813</sup> See *Kenya* – CEACR, observation, 2009.

<sup>814</sup> Section 9(1) of the Statute 20/2007. See *Spain* – CEACR, observation, 2010.

its forms, irrespective of whether or not there is a contractual employment relationship or whether or not the work is remunerated.<sup>815</sup>

342. However, as the legislation implementing the Convention in many countries only covers formal labour relationships, children working in the informal economy often do not benefit from any legal protection. The absence of legislative protection is exacerbated by the fact that, without a legislative basis to proceed, labour inspectors in many countries are unable to monitor children in this sector.<sup>816</sup> Recalling that the Convention applies to all sectors of the economy and all forms of work, the Committee encourages governments to take the necessary measures to ensure that the protection afforded by the Convention is enjoyed by children working in the informal economy, including through taking legislative measures to address these gaps.<sup>817</sup> Such measures are particularly important in countries where a large number of children are found to be working in the informal economy.<sup>818</sup> The Committee also calls on governments undertaking a review of their labour legislation to consider, in this context, taking measures to address children working in the informal economy.

### *Monitoring mechanisms of child labour in the informal economy*

#### Labour inspection

343. Child labour in the informal economy can also be addressed through monitoring mechanisms, including through labour inspection. Several countries have successfully undertaken measures to adapt and reinforce their labour inspectorate to address child labour in the informal economy, particularly in Latin America. For example, in *Nicaragua*, the labour inspection system was strengthened through links with various governmental and non-governmental organizations to increase labour inspection activities in the informal economy, particularly with a view to eliminating child labour.<sup>819</sup> In *Brazil*, the Ministry of Labour and Employment modified the functions of the Special Mobile Inspection Group and extended the scope of action of labour inspectors to combating child labour in both the formal and informal economies.<sup>820</sup> In *Argentina*, Act No. 26.390 of 25 June 2008 stipulates that the labour inspection services must exercise their role to enforce the prohibition of work under the minimum age, including work in the informal sector.<sup>821</sup> Examples from other regions include *Benin*, where the Committee noted the Government's indication that the labour inspectorate is increasingly extending its actions in the informal economy, including through

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<sup>815</sup> Section 2(3) of Act No. 26.390 of 25 June 2008. See *Argentina* – CEACR, observation, 2009.

<sup>816</sup> See, for example, *Morocco* – CEACR, observation, 2010 (The Committee noted the Government's indication that labour inspectors are only authorized to ensure the application of the labour legislation once there is an employment relationship and that consequently labour inspectors do not carry out any checks in the informal sector); and *Romania* – CEACR, observation, 2010 (The Government indicated that the labour inspectorate monitors only the work of persons employed by an individual labour contract, and has no competence with regard to persons working on their own account).

<sup>817</sup> See, for example, *Burundi* – CEACR, observation, 2008; *Côte d'Ivoire* – CEACR, observation, 2011; *Indonesia* – CEACR, observation, 2011; and *Russian Federation* – CEACR, direct request, 2010.

<sup>818</sup> See, for example, *Angola* – CEACR, direct request, 2011; *Central African Republic* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2011; and *Mongolia* – CEACR, observation, 2010.

<sup>819</sup> *Nicaragua* – CEACR, observation, 2010.

<sup>820</sup> *Brazil* – CEACR, direct request, 2010.

<sup>821</sup> *Argentina* – CEACR, observation, 2009.

inspections of small-scale gravel and granite quarries<sup>822</sup> and *Bosnia and Herzegovina*, where labour inspection includes illegal work involving children and youth and the informal economy.<sup>823</sup>

#### Child labour monitoring systems

344. Non-traditional monitoring mechanisms play an important role in addressing child labour in the informal economy. As discussed by the Committee in its 2006 General Survey on labour inspection, ILO-IPEC has developed the concept of “child labour monitoring systems” (CLMS) to address the difficulties of monitoring the informal economy. These CLMS act in partnership with the labour inspectorate to extend its eyes and ears through locally developed teams of monitors.<sup>824</sup> The Committee has noted the establishment of CLMS in several countries, including *Albania, Kenya, Malawi, Sri Lanka, Turkey* and *Ukraine*.<sup>825</sup> Other institutions may also be involved in monitoring child labour in the informal economy. For example, in *Angola*, the Government indicated that due to the specificity of the informal economy, provincial monitoring units serve to supervise this sector, in addition to the Labour Inspectorate.<sup>826</sup> In *Papua New Guinea*, the Ministry of Community Development (with the Consultative Implementation and Monitoring Council) monitors the implementation of the Informal Sector Control and Management Act, overseeing the situation of child labour in the informal economy throughout the country.<sup>827</sup>

345. *However, as discussed by the Committee in its 2006 General Survey on labour inspection, the limited number of labour inspectors in some member States, particularly developing countries, has made it difficult for inspectors to cover the informal economy and agriculture where most child labour is found.*<sup>828</sup> *Therefore, the Committee calls on governments to strengthen the capacity and expand the reach of the labour inspectorate in the informal economy to address child labour in this sector, and welcomes measures taken in this regard.*<sup>829</sup> *The Committee is of the view that the expansion of the relevant monitoring mechanisms to the informal economy can be an important manner in which to ensure that the Convention is applied in practice, particularly in countries where expanding the scope of the implementing legislation to address children working in this sector does not seem a practicable solution.*

<sup>822</sup> *Benin* – CEACR, direct request, 2011.

<sup>823</sup> *Bosnia and Herzegovina* – CEACR, direct request, 2009.

<sup>824</sup> General Survey, 2006, para. 50.

<sup>825</sup> *Albania* – CEACR, direct request, 2009; *Kenya* – CEACR, observation, 2009; *Malawi* – CEACR, direct request, 2011, Convention No. 182; *Sri Lanka* – CEACR, direct request, 2004; and *Turkey* – CEACR, observation, 2009.

<sup>826</sup> *Angola* – CEACR, direct request, 2011.

<sup>827</sup> *Papua New Guinea* – CEACR, direct request, 2010.

<sup>828</sup> General Survey, 2006, para. 50.

<sup>829</sup> See, for example, *Albania* – CEACR, observation, 2011; *Azerbaijan* – CEACR, observation, 2011; *Cameroon* – CEACR, observation, 2011; *Central African Republic* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 2011; *Comoros* – CEACR, direct request, 2011; *Mozambique* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; *Philippines* – CEACR, observation, 2010; *Romania* – CEACR, observation, 2010; and *Ukraine* – CEACR, observation, 2010.

*Good practices in reaching out to children working in the informal economy*

346. In an effort to reach out to children working in the informal economy, several member States have implemented a variety of programmes to combat child labour in this sector. As noted in the *Digest on the informal economy*, most persons enter the informal economy not by choice, but out of a need to survive.<sup>830</sup> This is of course particularly true of children working in this sector, and therefore programmatic measures which offer alternatives to this work have had some success in combating child labour in the sector.

347. These programmes may include specific measures to remove children from work in the informal economy, and often involve initiatives to reintegrate these children into school. For example, in *Viet Nam*, the Government has initiated several policies for children under 15 years working on their own account, including referring these children to social centres and encouraging their families to support their attendance in school or vocational training.<sup>831</sup> Addressing the needs of children engaged in, or at risk of becoming engaged in, the informal economy may also include social protection measures. This has been done in *Chile* through a component of the social protection scheme entitled “the Bridge Programme”, which benefits young persons from more than 5,700 families, and contains measures for their reintegration into school.<sup>832</sup> Several countries have also mainstreamed the issue of children working in the informal economy into national action plans to combat child labour, as has been done in *Namibia* through the Action Programme to Eliminate Child Labour 2008–12.<sup>833</sup> Moreover, ILO–IPEC collaborates with several governments on projects to protect children working in the informal economy and withdraw them from this work, including in *Bangladesh*,<sup>834</sup> *Senegal*,<sup>835</sup> *Kenya*, *Ghana*, *Uganda* and the *United Republic of Tanzania*.<sup>836</sup> Recognizing the success achieved in these countries, the Committee encourages governments to undertake, or to pursue, programmatic measures to ensure that the protection provided by the Convention is enjoyed, in practice, by children working in the informal economy.

## Child labour in agriculture

348. The Global Report of 2010 indicates that approximately 60 per cent of child labourers worldwide are engaged in the agricultural sector in both the formal and informal sectors.<sup>837</sup> Due to the prevalence of child labour in agriculture, the Committee has increasingly emphasized the importance of effectively applying the Convention to this sector. In this regard, the Committee wishes to underline that applying the Convention to the agricultural sector is not simply a question of aligning *national legislation* governing agriculture with the provisions of the Convention, but predominantly a question of the *practical* application of the Convention to this sector.

<sup>830</sup> *Digest on the informal economy*, op. cit., p. 5.

<sup>831</sup> *Viet Nam* – CEACR, direct request, 2010.

<sup>832</sup> *Chile* – CEACR, direct request, 2011.

<sup>833</sup> *Namibia* – CEACR, direct request, 2010.

<sup>834</sup> ILO–IPEC Time-Bound Programme entitled “Prevention and elimination of the worst forms of child labour in the urban informal economy of Dhaka Metropolitan Area”, implemented from 2007 to 2011.

<sup>835</sup> *Senegal* – CEACR, observation, 2011.

<sup>836</sup> ILO–IPEC programme entitled “Kenya, Ghana, Uganda, Tanzania: Skills training strategies to combat the worst forms of child labour in the urban informal sector”, implemented from 2004 to 2007.

<sup>837</sup> *Accelerating action against child labour*, op. cit., para. 34 and fig. 1.4.

*Application of the Convention to the agricultural sector in law*

349. In the majority of countries in which the Convention is in force, the legislation giving effect to it applies to all areas of the formal economy, including agricultural activities. Moreover, in cases where the general labour legislation does not cover the agricultural sector (or explicitly excludes this sector), various legislative initiatives have been taken by governments to ensure that children working in agriculture benefit from the protection provided for in the Convention. For example, in *Jordan*, the Labour Code previously excluded from its scope of application, inter alia, agricultural workers, and the Code's provisions on the minimum age therefore did not apply to children working in the agricultural sector. The Committee called on the Government to ensure that children working in agriculture benefited from the protection of the Convention. It subsequently noted with interest that the Labour Code was amended in 2008 to broaden the scope of application to include "all workers".<sup>838</sup>

350. However, in several countries, children working in agriculture remain excluded from the protection provided for in the Convention. The agricultural sector may be explicitly excluded from the scope of application of the State's implementing legislation,<sup>839</sup> or implicitly excluded in countries where the implementing legislation only applies to the formal economy, but children work in informal agriculture (such as small-scale and informal undertakings or family farms). In both such cases, the Committee recalls that the Convention applies to all sectors and calls on governments to amend the legislation to ensure that children working in the agricultural sector benefit from the protection provided for in the Convention. The Committee emphasizes that the absence of an applicable minimum age to the agricultural sector is particularly problematic in countries where there are a large number of children engaged in this sector.<sup>840</sup>

*Issues arising out of the application of the Convention in the agricultural sector*

351. While the legislative application of the Convention in the agricultural sector is vital, the larger challenge lies in applying the Convention to this sector in practice. In this vein, the Committee has noted the information from various governments,<sup>841</sup> social partners<sup>842</sup> and statistical studies<sup>843</sup> that the majority of working children in their country are engaged in the agricultural sector, or that child labour in agriculture remains prevalent in the country.<sup>844</sup> This work can take many forms: in many countries, child

<sup>838</sup> Section 3(d) of Law No. 8 of 1996 issuing the Labour Code. See *Jordan* – CEACR, direct request, 2003 and observation, 2011.

<sup>839</sup> See, for example, *Swaziland* – CEACR, direct request, 2010; *United Arab Emirates* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

<sup>840</sup> See, for example, *Philippines* – CEACR, observation, 2010; and *Swaziland* – CEACR, direct request, 2010.

<sup>841</sup> See, for example, *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Senegal* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2010.

<sup>842</sup> See, for example, *Colombia* – CEACR, observation, 2011; and *Georgia* – CEACR, observation, 2011.

<sup>843</sup> See, for example, *Azerbaijan* – CEACR, observation, 2011; *Egypt* – CEACR, observation, 2011; *El Salvador* – CEACR, observation, 2009; *Guatemala* – CEACR, observation, 2009; *Honduras* – CEACR, observation, 2009; *Madagascar* – CEACR, observation, 2010; *Pakistan* – CEACR, direct request, 2010; and *Togo* – CEACR, observation, 2011.

<sup>844</sup> See, for example, *Guyana* – CEACR, direct request, 2010; *Israel* – CEACR, direct request, 2009; *Kyrgyzstan* – CEACR, direct request, 2010; and *Republic of Moldova* – CEACR, direct request, 2010.



labour occurs mostly in small-scale farming and family farms,<sup>845</sup> but children are also engaged in commercial agriculture in numerous States.<sup>846</sup> Child labour in agriculture may also occur on a seasonal basis, only during a specific harvest time.<sup>847</sup> Due to the various modalities in which child labour in agriculture occurs, there is no uniform solution for the effective application of the Convention to this sector. The Committee has therefore noted a wide range of positive initiatives taken by governments to address this challenge.

#### Monitoring child labour in agriculture through labour inspection

352. The Committee is of the view that labour inspection plays a key role in the application of the Convention to the agricultural sector.<sup>848</sup> For example, in *Egypt*, a separate unit within the Ministry of Manpower and Migration is responsible for child labour investigations in the agricultural sector and inspections are carried out in small family enterprises in the agricultural sector. Moreover, the Egyptian child labour inspectorate coordinates with community-based organizations in each of the governorates, and a child labour monitoring and tracking system has been set up for children working in agriculture.<sup>849</sup> With regard to specific sectors, the Government of *Belize* has hired additional labour inspectors for banana plantations, where much of the country's child labour occurs, while the Government of *El Salvador* undertook intense supervisory and inspection activities in the sugar cane sector.<sup>850</sup>

353. However, the monitoring of child labour in the agricultural sector remains difficult in many countries, particularly due to a lack of capacity.<sup>851</sup> To address these difficulties, the Committee calls on governments to take measures to adapt and strengthen the labour inspection services so that they can secure the protection set out in the Convention for children working in the agricultural sector.<sup>852</sup>

<sup>845</sup> See, for example, *Morocco* – CEACR, observation, 2010; and *Zambia* – CEACR, observation, 2009.

<sup>846</sup> See, for example, *Belize* – CEACR, direct request, 2009; *Cameroon* – CEACR, observation, 2011; and *Kenya* – CEACR, observation, 2009.

<sup>847</sup> See, for example, *Georgia* – CEACR, observation, 2009; and *Tajikistan* – CEACR, direct request, 2010.

<sup>848</sup> In this regard, the Committee has referred to its comments made under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), in its examination of Convention No. 138. See, for example, *Egypt* – CEACR, observation, 2010; and *Madagascar* – CEACR, direct request, 2006.

<sup>849</sup> *Egypt* – CEACR, observation, 2011.

<sup>850</sup> *Belize* – CEACR, direct request, 2009 and 2011; and *El Salvador* – CEACR, observation 2007.

<sup>851</sup> For example, in *Tajikistan*, the budget of the labour inspectorate was too small to travel outside major cities, essentially making it impossible to monitor the agricultural industry (the largest sector employing children in the country). In *Namibia*, the periodic labour inspections carried out by the Ministry of Labour and Social Welfare occurred almost entirely in commercial agriculture, although many more children work in subsistence agriculture. See, *Namibia* – CEACR, direct request, 2010; and *Tajikistan* – CEACR, direct request, 2010.

<sup>852</sup> See, for example, *Azerbaijan* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2010.

## Programmatic measures to address child labour in agriculture

354. Many States endeavour to reduce the large number of children working in the agricultural sector by implementing programmatic measures aimed at this group. These programmes work to prevent children under the minimum age from prematurely entering the labour market, as well as serving to withdraw children already engaged in agricultural work. These include measures to strengthen the functioning of the education system in areas where children are most frequently engaged in agricultural production, primarily rural areas.<sup>853</sup> Many ongoing ILO–IPEC programmes also focus on agriculture (or contain elements addressing child labour in agriculture)<sup>854</sup> and several national action plans to combat child labour have prioritized action in the agricultural sector.<sup>855</sup> The social partners may also play a key role in measures to combat child labour in agriculture. For example, in *Argentina*, the Committee noted with interest the National Plan for the Prevention and Elimination of Child Labour, which includes the increased participation of workers’ organizations and led to the signing of a Memorandum of Intent for the prevention and elimination of child labour in the agricultural sector on 12 June 2007.<sup>856</sup> In *Turkey*, the Ministry of National Education implemented a direct action programme on child labour in seasonal commercial agriculture, with the participation of the Turkish Confederation of Employers’ Associations (TİSK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ), from 2005 to 2007.<sup>857</sup>

**355. *The Committee welcomes these initiatives and in cases where child labour in agriculture continues to be a serious issue the Committee strongly encourages governments to intensify their efforts to combat child labour in this sector. Regarding countries where child labour in agriculture remains prevalent the Committee expresses its serious concern at the continued engagement of children under the minimum age in agriculture, and calls on governments to take the necessary measures to combat this phenomenon. As noted in the Global Report of 2010, “[m]eeting ... the ultimate goal of the effective abolition of child labour requires a breakthrough in agriculture, where most child labourers work”.<sup>858</sup> In this regard, the Committee will continue to call on governments to ensure the effective application of the Convention in the agricultural sector, in both law and practice.***

## Family workers and domestic workers

356. In several member States, the legislation giving effect to the Convention explicitly excludes family work and domestic work, although these types of work have not been excluded by the respective governments through the flexibility clauses available in *Articles 4 and 5*. The Committee is of the view that addressing these gaps is essential to ensure the comprehensive application of the Convention to all working children.

<sup>853</sup> See, for example, *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>854</sup> See, for example, *Dominican Republic* – CEACR, observation, 2009; *Kenya* – CEACR, observation, 2009; *Togo* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2011.

<sup>855</sup> See, for example, *Argentina* – CEACR, observation, 2009; and *Philippines* – CEACR, observation, 2010.

<sup>856</sup> *Argentina* – CEACR, observation, 2009.

<sup>857</sup> *Turkey* – CEACR, observation, 2011.

<sup>858</sup> *Accelerating action against child labour*, op. cit., p. xv. See, for example, *Colombia* – CEACR, observation, 2011; *Pakistan* – CEACR, direct request, 2010; *Uganda* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, observation, 2011.

*Family workers, including unpaid family work*

357. The Committee has noted the various measures taken by governments to ensure that children engaged in unpaid family work benefit from the protection provided for in the Convention. For example, in *Zambia*, having previously noted that the relevant legislation authorized employment under the minimum age in undertakings where only members of the same family were employed, the Committee subsequently noted with satisfaction that the Employment of Young Persons and Children Act was amended in 2004 to include family enterprises, and applies the Convention to children working in such a setting.<sup>859</sup> In, *Kenya*, the Committee previously noted that the term “child labour” in the Children Act, 2001, only applied in situations where children provided labour in exchange for payment and that unpaid workers (mostly family workers) did not benefit from the protection of the Convention. The Committee subsequently noted with satisfaction that the Employment Act of 2007 prohibits employing a child under the minimum age, whether gainfully or otherwise, thereby providing protection to children working on an unpaid basis.<sup>860</sup>

358. Nonetheless, many countries have yet to take action to ensure the application of the minimum age provisions to children engaged in family work.<sup>861</sup> As 67.5 per cent of children engaged in child labour globally are unpaid family workers,<sup>862</sup> these exclusions can result in the exclusion of the majority of working children in a country from benefiting from the protection of the Convention. Therefore, the Committee wishes to highlight the importance of ensuring the protection of children working in family undertakings and requests governments to take the necessary measures to ensure that the protection afforded by the Convention is applicable to children working in all sectors, including family undertakings.

*Child domestic workers*

359. The Committee has also noted certain positive measures taken by some governments to ensure that children engaged in domestic work benefit from the protection provided for in the Convention. In *Kuwait*, the Committee previously noted that Act No. 38 of 1964 on Labour in the Private Sector excluded domestic workers from its scope of application, and therefore the minimum age did not apply to persons working in this sector. However, the Committee subsequently noted with interest that Order No. 640 (relating to the Foreigners Residence Act) stipulates that the minimum age for domestic workers is 20 years of age.<sup>863</sup> Similarly, in the *Philippines*, the Committee noted that Department Order No. 4 of 1999 stipulates that persons aged 15–18 years may be allowed to engage in domestic or household service, thereby applying the minimum age to this sector.<sup>864</sup> The Committee has also noted the indications of several governments that draft legislation, currently under discussion in their respective countries, would apply the minimum age provisions to domestic workers,

<sup>859</sup> Sections 3 and 4(a) of the Employment of Young Persons and Children (Amendment) Act of 2004. See *Zambia* – CEACR, direct request, 2002, and observation, 2009.

<sup>860</sup> *Kenya* – CEACR, observation, 2009.

<sup>861</sup> See, for example, *Angola* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

<sup>862</sup> *Accelerating action against child labour*, op. cit., fig. 1.7.

<sup>863</sup> *Kuwait* – CEACR, direct request, 2004, and observation, 2010.

<sup>864</sup> Section 4 of Department Order No. 4 of 1999. See *Philippines* – CEACR, observation, 2010.

including *Lesotho*, *Indonesia* and *Swaziland*.<sup>865</sup> Some other countries have taken steps to prohibit domestic work for children under 18.<sup>866</sup> The Committee consequently encourages these governments to take the necessary measures to ensure the application of the Convention to domestic workers through the adoption of the relevant legislation.

**360. However, the Committee has noted that, in several countries, domestic work remains excluded from the scope of application of the Convention.<sup>867</sup> This is particularly problematic, as an estimated 15.5 million children are engaged in domestic work worldwide.<sup>868</sup> Accordingly, the Committee calls on governments to take the necessary measures to ensure that children engaged in domestic work benefit from the protection provided for in the Convention, particularly in countries where there are a high number of children under the minimum age engaged in this sector.<sup>869</sup>**

361. Child labour in domestic work and family work are both identified in the Global Report of 2010 as sectors that require strengthened action to eliminate child labour.<sup>870</sup> The Committee also recognizes that addressing child domestic work will continue to be crucial in light of the recent adoption of the Domestic Workers Convention (No. 189) by the Conference in June 2011. Due to the large number of children engaged in family work globally, and the potential vulnerability of child domestic workers, the Committee wishes to underline the importance of applying the Convention to children working in both of these areas.

## Minimum age for admission to employment or work

### *Setting the general minimum age for admission to employment or work*

362. *Article 2(1)* of Convention No. 138 provides that each member State which ratifies the Convention shall specify a general minimum age for admission to employment or work at the time of ratification. In accordance with *Article 2(3)*, the general minimum age shall not be less than 15 years. However, the Convention allows more flexibility to member States whose economy and educational facilities are insufficiently developed.<sup>871</sup> Developing countries that face difficulty in enforcing a general minimum age of 15 may initially specify a minimum age of 14 provided that prior consultations with organizations of employers and workers have been held. Member States which avail themselves of this flexibility clause are further required to indicate, in subsequent reports submitted to the Office under article 22 of the Constitution, either that the reasons for maintaining a lower minimum age subsist or that they renounce availing themselves of the provision in question as from a stated date.<sup>872</sup>

<sup>865</sup> *Lesotho* – CEACR, observation, 2011; *Indonesia* – CEACR, observation, 2011; and *Swaziland* – CEACR, direct request, 2010.

<sup>866</sup> See, for example, *Benin* – CEACR, direct request, 2011; *Brazil* – CEACR, observation, 2010; and *Colombia* – CEACR, direct request, 2011.

<sup>867</sup> See, for example, *Cyprus* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; *Sudan* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, direct request, 2010.

<sup>868</sup> As of 2008, according to the ILO Statistical Information and Monitoring Programme on Child Labour (IPEC–SIMPOC). See *Domestic work: Policy brief: Global and regional estimates on domestic workers*, (Geneva, ILO, 2011), p. 9.

<sup>869</sup> See, for example, *Chad* – CEACR, direct request, 2010; and *Mozambique* – CEACR, direct request, 2010.

<sup>870</sup> *Accelerating action against child labour*, op. cit., paras 37, 141 and 254.

<sup>871</sup> Art. 2(4) of the Convention.

<sup>872</sup> Art. 2(5) of the Convention.

363. Of the 161 countries that have ratified Convention No. 138, nearly half, that is to say 72 countries, have set the general minimum age for admission to employment or work at 15 years of age<sup>873</sup> and 40 member States have decided to go beyond the obligation laid down in *Article 2(3)* in fixing the general minimum age at 16 years. This mainly concerns industrialized countries, but includes a certain number of developing countries as well such as *Burundi, Djibouti, Gabon, Guinea, Kenya and Tajikistan*. A smaller number of member States, that is to say 49 developing countries, have availed themselves of the flexibility clause contained in *Article 2(4)* to set the minimum age at 14 years.<sup>874</sup>

*Raising the general minimum age for admission to employment or work*

364. Under *Article 2(2)*, member States have the opportunity to raise subsequently the general minimum age for admission to work or employment initially specified at the time of ratification. In this regard, Paragraph 7(1) of the Minimum Age Recommendation, 1973 (No. 146), indicates that raising progressively the general minimum age to 16 years should be taken as an objective. Furthermore, in accordance with Paragraph 7(2), where the minimum age for admission to employment or work is still below 15 years, urgent steps should be taken to raise it to that level. A Member showing a willingness to do so may notify its decision in a declaration addressed to the Director-General of the ILO.

365. The Committee has noted with satisfaction the cases of *Argentina, Colombia* and *Egypt* which have recently sent such a declaration to the Office. *Argentina* has officially raised the minimum age for admission to employment or work from 15 to 16 years.<sup>875</sup> And both *Colombia* and *Egypt* have officially raised the minimum age for admission to employment or work from 14 to 15 years.<sup>876</sup> On numerous occasions, the Committee has also observed that some countries have adopted new legislation establishing a general minimum age higher than that specified at the time of ratification and has thus drawn the attention of the governments concerned to the possibility of raising the minimum age initially specified by means of a declaration sent to the Office.<sup>877</sup> Furthermore, in recent years, several countries have expressed their willingness to raise the general minimum age in the near future.<sup>878</sup> However, while a sizeable number of member States have raised the general minimum age in national legislation, only a few have so far notified their decision to raise the minimum age by means of a new declaration.<sup>879</sup>

<sup>873</sup> In their reports under art. 19 of the ILO Constitution, the Governments of Saudi Arabia and *Timor-Leste* have indicated that children below 15 years are not entitled to work.

<sup>874</sup> In their reports under art. 19 of the ILO Constitution, the Governments of *Bangladesh* and India indicated that their legislation provides for a minimum age for admission to employment or work of 14 years of age.

<sup>875</sup> See *Argentina* – CEACR, observation, 2011.

<sup>876</sup> See *Colombia* – CEACR, direct request, 2009; and *Egypt* – CEACR, observation, 2011.

<sup>877</sup> See, for example, *Bahamas* – CEACR, direct request, 2008; *Barbados* – CEACR, direct request, 2006; *Burkina Faso* – CEACR, direct request, 2009; *Chile* – CEACR, direct request, 2005; *Ecuador* – CEACR, observation, 2009; *Gambia* – CEACR, direct request, 2010; *Italy* – CEACR, direct request, 2011; *Panama* – CEACR, observation, 2011; *Rwanda* – CEACR, direct request, 2011; *Togo* – CEACR, observation, 2011; and *Yemen* – CEACR, direct request, 2010.

<sup>878</sup> See, for example, *Dominican Republic* – CEACR, direct request, 2007; *Mali* – CEACR, direct request, 2010; *Mauritius* – CEACR, direct request, 2006; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; and *Uruguay* – CEACR, direct request, 2010.

<sup>879</sup> Only three countries have done so in the last three years: *Argentina, Colombia* and *Egypt*.

366. Conversely, the Committee has observed on several occasions that the national legislation of some countries authorizes children to work at an age lower than the minimum age specified upon ratification of the Convention. It has examined situations in which the law allows younger children to work under special circumstances,<sup>880</sup> for example, when parental consent is given<sup>881</sup> or if the authorities consider that it is indispensable to provide for their subsistence or that of their family; or situations in which part of or all of the legislation has not been brought into conformity with the Convention.<sup>882</sup> *In this connection, the Committee emphasizes that, notwithstanding the exceptions provided for in the Convention,<sup>883</sup> no child shall be admitted to work under the minimum age specified and emphasizes that Article 2(2) foresees the raising of the minimum age but does not allow the lowering of the minimum age once declared. Some countries still have not amended their legislation since they ratified the Convention and therefore do not comply with the requirements of the Convention.*<sup>884</sup> *The Committee accordingly considers that the governments concerned should take immediate measures to fix the minimum age at the age specified at the time of ratification in order to comply with the Convention.*

*Minimum age for admission to work  
and compulsory education*

367. During the elaboration of Convention No. 138, emphasis was placed by the tripartite constituents on the close relationship between education and the minimum age for admission to employment or work bearing in mind that depriving children of opportunities for education and training condemned them to remain unskilled and thus perpetuated the poverty of a society.<sup>885</sup> Article 2(3) of Convention No. 138 thus provides that the specified minimum age shall not be less than the age of completion of compulsory schooling. Paragraph 4 of Recommendation No. 146 reinforces this principle by advocating that full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively guaranteed up to an age at least equal to that specified for admission to employment.

*Ensuring compulsory education  
up to the minimum age*

368. A significant number of member States have adopted regulations fixing the age of completion of compulsory education in line with the minimum age for admission to employment or work. For example, in *Thailand*, the National Education Act provides for nine years of compulsory education and under the Compulsory Education Act, whoever, without reasonable cause, commits any act causing a juvenile not to be enrolled for education in an educational establishment shall be liable to a fine.<sup>886</sup> In *Kyrgyzstan*, the

<sup>880</sup> See, for example, *Honduras* – CEACR, observation, 2009; and *Senegal* – CEACR, observation, 2011.

<sup>881</sup> See, for example, *Tajikistan* – CEACR, observation, 2010; and *Ukraine* – CEACR, observation, 2010.

<sup>882</sup> See, for example, *Azerbaijan* – CEACR, observation, 2011; and *Costa Rica* – CEACR, observation, 2011.

<sup>883</sup> See Art. 4 (exclusion of limited categories of employment or work), Art. 5 (exclusion of economic sectors), Art. 6 (exception of work done as part of education and training), Art. 7 (exception of light work) and Art. 8 (exception of artistic performances).

<sup>884</sup> See, for example, *Azerbaijan* – CEACR, observation, 2011; *Dominica* – CEACR, direct request, 1997; *Honduras* – CEACR, observation, 2009; *Kuwait* – CEACR, observation, 2010; *Malaysia* – CEACR, observation, 2010; *Senegal* – CEACR, observation, 2011; and *Tajikistan* – CEACR, observation, 2010.

<sup>885</sup> *Record of proceedings*, ILC, 57th Session, Geneva, 1972 (Appendix IV: Minimum Age for Admission to Employment (first discussion)), para. 8, p. 537.

<sup>886</sup> See *Thailand* – CEACR, direct request, 2010.

Kyrgyz Republic Education Law provides for free and compulsory education up to 16 years of age.<sup>887</sup> Moreover, in its report supplied under article 19 of the ILO Constitution, the Government of New Zealand has indicated that employers are prohibited from employing school-age children (below 16) during school hours, or when it would interfere with their attendance at school. Similarly, according to the information provided by Australia in its report under article 19, all provinces of the country prohibit children of compulsory school age from working during school hours. The Government of Canada has also indicated in its report under article 19 that the employment of a school-age child (until 16) during school hours is prohibited in all jurisdictions of Canada. In the United States, according to the report submitted by the Government under article 19, all states have established the age of completion of compulsory education at least until the age of 16 and the majority of states have a general minimum age for admission to employment or work of 16.

369. However, the national legislation of some countries is not in conformity with *Article 2(3)*. In this regard, the Committee has observed different trends. It has noted that the national legislation of certain countries, especially developing countries, does not provide for compulsory schooling,<sup>888</sup> although in certain cases it provides for free education.<sup>889</sup> In this regard, the Committee recalls that compulsory education is one of the most effective means of combating child labour. It thus stresses the importance of adopting legislation providing for compulsory education up to the minimum age for admission to employment or work, because where there are no legal requirements establishing compulsory schooling, there is a greater likelihood that children under the minimum age will be engaged in child labour.

#### Linking the age of completion of compulsory education with the minimum age for admission to work

370. The Committee has also noted that while the national legislation of some countries provides for compulsory education, the age of completion of compulsory schooling is higher than that of the general minimum age for admission to employment or work, which is contrary to *Article 2(3)*.<sup>890</sup> It points out that if the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work.<sup>891</sup> In such cases, the Committee calls on the governments concerned to take the necessary measures to raise the general minimum age in order to link it with the age of completion of compulsory schooling in conformity with the Convention. Some governments have taken corresponding measures. In the case of *Mauritius*, for example, the Committee has been able to note with satisfaction that an amendment of the Labour Act was subsequently adopted in order to raise the minimum age to 16.<sup>892</sup>

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<sup>887</sup> See *Kyrgyzstan* – CEACR, direct request, 2010.

<sup>888</sup> These include: *Iraq* – CEACR, direct request, 2011; *Kenya* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, observation, 2011.

<sup>889</sup> These include: *Oman* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

<sup>890</sup> See, for example, *Italy* – CEACR, direct request, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Rwanda* – CEACR, direct request, 2010; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2010.

<sup>891</sup> General Survey, 1981, para. 140.

<sup>892</sup> See *Mauritius* – CEACR, observation, 2008.

371. Finally, in some countries, the age of completion of compulsory education is lower than the minimum age for admission to employment or work. Although this situation does not contravene *Article 2(3)* of the Convention, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children.<sup>893</sup> For these reasons, it strongly encourages member States to consider raising the age of completion of compulsory education to coincide with that of the minimum age for admission to employment or work.

#### Ensuring access to compulsory education for all children

372. The Committee not only attaches importance to the need to adopt legal provisions establishing compulsory education, but also underlines that compulsory schooling should be effectively implemented in practice. The Committee has taken due note that in order to achieve the goal of compulsory education for children up to the minimum age for admission to employment or work, a number of countries have implemented conditional cash transfer (CCT) programmes. These programmes are intended to provide grants to poor households with children on the condition, inter alia, of their school attendance.<sup>894</sup> Most CCT programmes have so far been developed in the Latin American and Caribbean region.<sup>895</sup> For example, in *Colombia*, the CCT programme *Familias en acción* provides grants to poor households with children, on the condition, inter alia, that children aged between 7 and 18 attend no less than 80 per cent of school classes during the school year.<sup>896</sup>

373. Other countries have decided to introduce free education, such as *China*, *Kenya* and *Zambia*,<sup>897</sup> or offer tuition grants to students enrolled in basic education, such as *Mozambique* and *Nicaragua*,<sup>898</sup> in order to provide universal access to compulsory education, thereby contributing to eradicating child labour.

**374. *In some cases, although education is compulsory up to the minimum age for admission to employment or work, a substantial number of children do not attend school.***<sup>899</sup> ***Therefore, where school attendance rates are particularly low, the Committee encourages member States to adopt policies aimed at improving the functioning of the education system in order to increase school attendance and***

<sup>893</sup> See, for example, *Kenya* – CEACR, observation, 2010; *Lebanon* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; *Pakistan* – CEACR, direct request, 2010; *Qatar* – CEACR, direct request, 2010; *Swaziland* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, observation, 2011.

<sup>894</sup> Recent examples of the implementation of conditional cash transfer programmes noted by the Committee include: *Colombia* – CEACR, observation, 2011; *Costa Rica* – CEACR, observation, 2011; *Lebanon* – CEACR, direct request, 2010; *Panama* – CEACR, observation, 2011; and *Paraguay* – CEACR, direct request, 2011.

<sup>895</sup> *Accelerating action against child labour*, op. cit., paras 226–232.

<sup>896</sup> See *Colombia* – CEACR, observation, 2011.

<sup>897</sup> See *China* – CEACR, observation, 2011; *Kenya* – CEACR, observation, 2010; and *Zambia* – CEACR, observation, 2010 (from grades 1 to 7). See also *China (Macau Special Administrative Region)* – CEACR, observation, 2011.

<sup>898</sup> See *Mozambique* – CEACR, direct request, 2009; and *Nicaragua* – CEACR, observation, 2010. See also *Belize* – CEACR, direct request, 2009; and *Guatemala* – CEACR, direct request, 2009.

<sup>899</sup> See, for example, *Angola* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2011; *Central African Republic* – CEACR, observation, 2010; *Côte d'Ivoire* – CEACR, observation, 2011; *Eritrea* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Peru* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010; *Bolivarian Republic of Venezuela* – CEACR, observation, 2011; and *Yemen* – CEACR, direct request, 2009.



*completion rates and reduce drop-out rates to the level corresponding to the age of completion of compulsory education.*

*375. The Committee is of the view that to prevent and combat child labour, compulsory education should be effectively implemented so as to ensure that all children under the minimum age are attending school and not engaged in economic activities.*

## Minimum age for hazardous work

### *Minimum age of 18 for admission to hazardous work*

376. *Article 3(1)* of the Convention provides that the minimum age “for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years”. Paragraph 9 of Recommendation No. 146 indicates that where the minimum age for admission to hazardous work is below 18 years, immediate steps should be taken to raise it to that level. The Convention does not provide any specific definition of hazardous work but, by virtue of *Article 3(2)*, these types of employment or work must be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned. The issues surrounding the types of hazardous work and their determination will be discussed in the next chapter on Convention No. 182, which includes a provision prohibiting hazardous work for persons below the age of 18 years.

### *Minimum age of 16 for admission to hazardous work and determination of such types of hazardous work*

377. The Convention, however, offers yet another flexibility clause. Indeed, *Article 3(3)* sets out conditions under which certain types of employment or work, notwithstanding the provisions of *paragraph 1*, may be performed as from the age of 16 years, provided the following conditions are met: (1) the organizations of employers and workers concerned must have been consulted beforehand; (2) the health, safety and morals of the young persons concerned must be fully protected; and (3) they must have received adequate specific instruction or vocational training in the relevant branch of activity.

378. Some member States, while expressly prohibiting work that is hazardous to the health, safety and morals of children under 18 years of age, have also availed themselves of the flexibility clause provided by *Article 3(3)* and set a minimum age of 16 for certain types of hazardous work, adopting both a list of types of hazardous work prohibited for young persons under 18 years and another for young persons under 16 years, under the conditions required by the Convention.<sup>900</sup> For instance, in *Turkey*, the Committee noted with satisfaction the adoption of Regulation No. 25494 on hazardous and arduous work of 16 June 2004 which includes a list of hazardous types of work which may be performed by young workers between 16 and 18 years of age.<sup>901</sup> It also noted that, under the terms of section 4 of Regulation No. 25494, the conditions set out in *Article 3(3)* of the Convention are respected, namely that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. In *Ireland*,

<sup>900</sup> See, for example, *Cambodia* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Finland* – CEACR, direct request, 2004; *Kenya* – CEACR, observation, 2010; *Mali* – CEACR, direct request, 2010; *Portugal* – CEACR, direct request, 2006; and *Sudan* – CEACR, direct request, 2010.

<sup>901</sup> *Turkey* – CEACR, observation, 2009.

regulations have been made to permit young persons between 16 and 18 years to become employed in the fishing or shipping sectors, provided that any young person so employed who is assigned to work between 10 p.m. on any one day and 6 a.m. on the following day is allowed equivalent compensatory rest time; in general duties during the summer or other holidays or for part-time work in licensed premises; and as an apprentice in a full-time capacity in licensed premises, and required to work up to midnight on any one day and not before 8 a.m. on the following day, provided that the young person is supervised by an adult.<sup>902</sup>

#### Absence of a general prohibition on hazardous work

**379. *Some member States have only provided for types of hazardous work in which young persons from 16 to 18 years may participate, but have not adopted a general prohibition on hazardous work for children under 18. The Committee emphasizes that the authorization to undertake hazardous work from the age of 16 years is a limited exception to the general rule on the prohibition of young persons under 18 years performing hazardous work, and that it does not constitute an unqualified authorization to engage in hazardous work as from the age of 16 years. The governments concerned must therefore take the necessary measures to ensure that no one under 18 years of age, other than in the exceptional cases allowed by the Convention, shall be authorized to engage in hazardous work, in accordance with Article 3(1).***<sup>903</sup>

#### Absence of a minimum age of 16 for prohibited types of hazardous work

380. Some countries have provided that young persons may undertake hazardous work under the conditions provided for in *Article 3(3)*, but have not specified a minimum age or have specified an age lower than that of 16 years. In those cases, the Committee requests the governments concerned to take measures to raise the minimum age for admission to hazardous work to 16 years, even if the required protective conditions are adequately provided.<sup>904</sup> As a result, in *Mauritius*, the Committee noted with satisfaction the adoption and coming into force of the Occupational Safety and Health Act No. 28 of 2005 in September 2007, which raised from 15 to 16 years the minimum age from which young persons may be authorized to work on hazardous machines on condition that their health and safety are fully protected and that they have received adequate training in the relevant branch of activity.<sup>905</sup>

<sup>902</sup> *Ireland* – CEACR, direct request, 2009.

<sup>903</sup> See, for example, *Djibouti* – CEACR, direct request, 2009; *Dominican Republic* – CEACR, direct request, 2005; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2010.

<sup>904</sup> See, for example, *Colombia* – CEACR, observation, 2011; *Cyprus* – CEACR, direct request, 2011; *Ethiopia* – CEACR, observation, 2010; *Japan* – CEACR, direct request, 2005; *Latvia* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Panama* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Syrian Arab Republic* – CEACR, direct request, 2010; *Ukraine* – CEACR, observation, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011. Moreover, in its report supplied under art. 19 of the ILO Constitution, for example, New Zealand has indicated that an employer must take all practicable steps to ensure that no one aged under 15 years works in any area that is likely to cause harm to the health and safety of a person, and must ensure that any employee under 15 years of age does not, among other things, operate heavy machinery, lift heavy loads or drive any vehicle. However, the New Zealand Council of Trade Unions has indicated that there is an unacceptably high rate of farm-based accidents involving tractors and other equipment. In the same vein, Australia has also indicated, in its report supplied under art. 19, that though the conditions for their protection are provided for, children may become engaged in certain types of hazardous work starting at 15 years of age in some provinces.

<sup>905</sup> *Mauritius* – CEACR, observation, 2010. On the other hand, in *Belgium* – CEACR, observation, 2011, the Committee has noted with regret that the Government's report contained no information on the incorporation of

## Non-compliance with the conditions required for carrying out hazardous work from the age of 16

381. The Committee has observed that certain countries have availed themselves of the possibility to establish a minimum age of 16 years for admission to hazardous work, but have not laid down the conditions required by the Convention in this respect.<sup>906</sup> For example, in *Saint Kitts and Nevis*, the Committee noted that the Employment of Women, Young Persons and Children Act prohibits the performance of night work by persons under 18, and that the Employment of Children (Restriction) Ordinance prohibits children under 16 years of age from being employed in any occupation likely to be injurious to their life, limbs, health or education, with regard being had only to their physical condition.<sup>907</sup> In this regard, the Committee stresses that the exception contained in *Article 3(3)* permits the competent authority to authorize hazardous work from the age of 16 years only on the condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific vocational training in the relevant branch of activity, following consultation with the employers' and workers' organizations concerned. In such cases, the Committee calls on the governments concerned to take measures to adopt legislation providing for all the appropriate provisions ensuring the protection of the young person, as required by *Article 3(3)* of the Convention.<sup>908</sup>

## Work done by children and young persons in general, vocational or technical education or in an apprenticeship programme

382. *Article 6* of Convention No. 138 allows member States to exclude from the application of the Convention work done in school for general, vocational or technical education or in training institutions or work done by children at least 14 years of age as apprentices in undertakings. However, the exemption can only apply if such work is an integral part of: (i) a course of education or training for which a school or training

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the Royal Order of 1999 into the Code on Wellbeing at Work, which raises the minimum age for admission to work (including certain types of hazardous work) from 15 to 16 years. The Committee therefore urged the Government to take immediate and effective measures to ensure that the performance of hazardous work may not under any circumstances be authorized for children under 16 years of age. Furthermore, in *Greece – CEACR*, observation, 2011, the Committee noted with concern that Presidential Decree No. 62/1998 continues to permit the performance of hazardous work by persons as of the age of 15 under certain conditions, pursuant to sections 2(c) and 7(5) and that no new legislative, administrative or other measures have been taken to prohibit the performance of hazardous work by persons as of the age of 15 under certain conditions. The Committee therefore strongly urged the Government to take the necessary measures to bring its national legislation into conformity with *Art. 3(3)* of the Convention.

<sup>906</sup> See, for example, *Benin – CEACR*, direct request, 2011; *Burundi – CEACR*, direct request, 2008; *Chad – CEACR*, direct request, 2010; *Comoros – CEACR*, direct request, 2010; *Democratic Republic of the Congo – CEACR*, direct request, 2009; *Denmark – CEACR*, direct request, 2009; *Dominican Republic – CEACR*, direct request, 2009; *Republic of Korea – CEACR*, direct request, 2008; *Malaysia – CEACR*, observation, 2010; *Mali – CEACR*, direct request, 2010; *Mauritania – CEACR*, direct request, 2010; *Niger – CEACR*, observation, 2011; *Papua New Guinea – CEACR*, direct request, 2010; *Peru – CEACR*, direct request, 2010; and *Senegal – CEACR*, observation, 2011. Similarly, in its report supplied under art. 19 of the ILO Constitution, the Government of the United States indicated that children who are 16 years of age may perform all farm work *with no restrictions* under the child labour laws.

<sup>907</sup> *Saint Kitts and Nevis – CEACR*, direct request, 2011.

<sup>908</sup> See, for example, *Congo – CEACR*, direct request, 2010. Order No. 2224 prohibits the employment of young workers under the age of 16 years in certain types of hazardous work, and provides that the labour and social legislation inspectors may require any young worker to undergo a medical examination in order to determine whether the work in which she or he is employed exceeds her or his capacities. The Committee recalled, however, that the Convention also requires that young persons aged between 16 and 18 years receive specific instruction or vocational training in the relevant branch of activity.

institution is primarily responsible; (ii) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or (iii) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. In all cases, the work must be carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned. Furthermore, Paragraph 12(2) of Recommendation No. 146 indicates that measures should be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training and to formulate standards for their protection and development.

### *The minimum age for admission to apprenticeship*

383. The Committee has noted that the national legislation of many countries meets the requirements of *Article 6* of the Convention.<sup>909</sup> In certain countries, the minimum age for entry into an apprenticeship relationship is even higher than that required under this provision. For example, in *Hungary*, training contracts may only be concluded with students who have reached the age of 16 years,<sup>910</sup> and in *Bosnia and Herzegovina* an apprentice shall not be younger than 18.<sup>911</sup> In cases where the legislation does not provide for a minimum age for admission to apprenticeship or authorizes children under 14 years to undertake an apprenticeship, member States have subsequently amended their legislation to ensure the protection afforded by the Convention to children under 14. For example, in *Georgia*, apprenticeship programmes could begin as from the age of 12 years, but the Committee subsequently noted with interest the adoption of the Law on professional education which provides for the vocational training and apprenticeship for children over 15 years.<sup>912</sup> Other examples include *Central African Republic* and *Chile*, where the Committee has noted with interest that regulations governing apprenticeship contracts have been adopted in accordance with the conditions set out in *Article 6* of the Convention.<sup>913</sup>

384. However, the Committee has found in some cases that either there are no provisions stipulating a minimum age for entry into apprenticeship,<sup>914</sup> or minors under 14 years may be legally engaged in apprenticeships.<sup>915</sup> The Committee therefore emphasizes the importance of setting a minimum age for admission to apprenticeship of at least 14 years to ensure that no child under that age undertakes an apprenticeship, as required by the Convention.

<sup>909</sup> See, for example, *Cameroon* – CEACR, observation, 2009; *Czech Republic* – CEACR, direct request, 2011; *Latvia* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Paraguay* – CEACR, direct request, 2011; *Qatar* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; and *Trinidad and Tobago* – CEACR, direct request, 2009.

<sup>910</sup> See *Hungary* – CEACR, direct request, 2009.

<sup>911</sup> See *Bosnia and Herzegovina* – CEACR, direct request, 2011.

<sup>912</sup> See *Georgia* – CEACR, direct request, 2009.

<sup>913</sup> See *Central African Republic* – CEACR, observation, 2010; and *Chile* – CEACR, direct request, 2009.

<sup>914</sup> See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2009; *Burkina Faso* – CEACR, direct request, 2009; *Estonia* – CEACR, direct request, 2011; *Pakistan* – CEACR, direct request, 2011; and *Saint Kitts and Nevis* – CEACR, direct request, 2011.

<sup>915</sup> See, for example, *Albania* – CEACR, observation, 2011; *Gambia* – CEACR, direct request, 2010; *Guatemala* – CEACR, direct request, 2009; *Kenya* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Mozambique* – CEACR, direct request, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

### *Apprenticeship and hazardous work*

385. In some countries, the prohibition on young persons under 16 from carrying out hazardous activities does not apply to apprentices or to young persons following courses in vocational schools, and consequently children may be engaged in such activities before reaching the age of 16, which is contrary to *Article 3(3)* of the Convention.<sup>916</sup> In these cases, the Committee has urged the governments to take the necessary measures to ensure that young persons below 16 years of age engaged in apprenticeship do not undertake hazardous work.

### *Problems of application of the legislation relating to work done as part of education and training*

386. In some countries, although national legislation regulates work in educational and training institutions and apprenticeships, it is not always enforced in practice. In *Kyrgyzstan*, for example, school-age children are required to participate in the tobacco harvest for the profit of educational institutions run by the State.<sup>917</sup> The Committee has recently expressed its concern at the alleged abuse of the apprenticeship system in *China*, where children under the minimum age for apprenticeship (16 years pursuant to the Provisional Regulation 1958) are recruited to work as apprentices in factories and work long hours for low pay.<sup>918</sup> In the case of *Benin*, although a significant number of apprentices under the age of 14 are exploited in the informal sector in carpentry workshops, sawmills, vehicle repair, welding and hair dressing, the Committee has nonetheless noted with interest that an ILO-IPEC project has been implemented to withdraw children from this type of work.<sup>919</sup>

387. The Committee is of the view that work in educational institutions and apprenticeships must be regulated by law, and that the law must be applied effectively in practice. Moreover, the minimum age for admission to apprenticeship must be applied in all circumstances and sectors,<sup>920</sup> including in the informal economy.<sup>921</sup>

## Employment in light work

### *Minimum age for light work*

388. According to the 2010 Global Report, 61,826,000 children aged 12–14 years are child labourers.<sup>922</sup> *Article 7* of the Convention aims to take into consideration the many instances of countries where children below the minimum age for admission to employment or work are compelled to participate in economic activities for a number of reasons, including poverty, and pertains to cases where children and young persons may be authorized to become engaged in certain types of work, under certain conditions, at an age that is lower than the minimum age for employment or work specified at the time of ratification. This was done in an “attempt to combine the measure of flexibility

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<sup>916</sup> These include *Ethiopia* – CEACR, observation, 2010; *Israel* – CEACR, direct request, 2011; and *Ukraine* – CEACR, observation, 2010.

<sup>917</sup> See *Kyrgyzstan* – CEACR, direct request, 2010.

<sup>918</sup> See *China* – CEACR, direct request, 2011.

<sup>919</sup> See *Benin* – CEACR, direct request, 2011.

<sup>920</sup> See *China* – CEACR, direct request, 2011.

<sup>921</sup> See *Gambia* – CEACR, direct request, 2010.

<sup>922</sup> *Accelerating action against child labour*, op. cit., table 1.2.

necessary to permit the wide application of the Convention, especially in view of its general scope, with the restrictions necessary to ensure adequate protection”.<sup>923</sup>

#### Lower minimum age of 13 for light work

389. *Article 7(1)* is a flexibility clause which provides that national laws or regulations may permit the employment or work of persons 13–15 years of age on light work which is not likely to be harmful to their health or development, and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Under *Article 7(2)*, the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling may be permitted, subject to the same conditions indicated under *Article 7(1)*.<sup>924</sup>

390. Many countries have availed themselves of the option provided by *Article 7(1)*. Where the general minimum age specified is 15, member States have generally indicated a minimum age of 13 years for light work.<sup>925</sup> Where the general minimum age is higher (16 years), member States have often accordingly indicated a higher minimum age for light work, that is to say 14 years.<sup>926</sup>

#### Lower minimum age of 12 for light work

391. *Article 7(4)* of the Convention permits member States who have specified a general minimum age for admission to employment or work of 14 years to substitute a minimum age for admission to light work of 12–14 years to that of the usual 13–15 years. The Committee has noted several instances in which countries which have specified a minimum age for employment or work of 14 years have availed themselves of the exception allowed for under this provision.<sup>927</sup> Similarly, in its report supplied under article 19 of the ILO Constitution, the Government of Bangladesh indicated that its legislation provides that children aged 12 years may be employed in light work that does not endanger their health and development or interfere with their education and school attendance, in conformity with the Convention.

392. However, some member States which had specified a general minimum age of 15 or 16 years at the time of ratification have also adopted legislation which provides for a

<sup>923</sup> *Minimum age for admission to employment*, op. cit., p. 20.

<sup>924</sup> See, for example, *Belarus* – CEACR, direct request, 2004; and *Bulgaria* – CEACR, direct request, 2005.

<sup>925</sup> See, for example, *Fiji* – CEACR, direct request, 2011; *Iceland* – CEACR, direct request, 2010; *Indonesia* – CEACR, observation, 2011; *Japan* – CEACR, direct request, 2005; *Lesotho* – CEACR, observation, 2011; *Latvia* – CEACR, direct request, 2009; and *Norway* – CEACR, direct request, 2001. In its report supplied under art. 19 of the ILO Constitution, the Government of Saudi Arabia indicates that its legislation provides for a minimum age of 13 years for light work. Furthermore, some member States have specified a minimum age for admission to light work of 14, and not 13 years, even if their general minimum age for admission to employment or work is 15 years. See, for example, *Madagascar* – CEACR, direct request, 2008 (the Committee took note of the Government’s information with interest); and *Turkey* – CEACR, direct request, 2006.

<sup>926</sup> See, for example, *Albania* – CEACR, observation, 2011; *Argentina* – CEACR, observation, 2009; *Armenia* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, direct request, 2011; *Belarus* – CEACR, direct request, 2006; *Lithuania* – CEACR, direct request, 2004; *Malta* – CEACR, direct request, 2007; *Russian Federation* – CEACR, direct request, 2010; *Tajikistan* – CEACR, direct request, 2010; and *Ukraine* – CEACR, observation, 2010.

<sup>927</sup> See, for example, *Belize* – CEACR, direct request, 2011; *Cambodia* – CEACR, direct request, 2009; *Côte d’Ivoire* – CEACR, direct request, 2009; *El Salvador* – CEACR, direct request, 2007; *Mauritania* – CEACR, direct request, 2010; *Peru* – CEACR, direct request, 2009; *Uganda* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2004. In *Benin* – CEACR, direct request, 2011, where the minimum age for light work was initially 12 years, the Committee noted the Government’s indication that it was envisaging increasing this minimum age to 13 years with the imminent adoption of a draft order.

minimum age for admission to light work of 12 years or less. In these cases, the Committee emphasizes that the governments in question should take the necessary measures to amend their legislation in order to ensure that the age for admission to light work is in conformity with *Article 7(1)* of the Convention, that is to say 13 years.<sup>928</sup> As a result, in *Mali*,<sup>929</sup> the Government indicated that it undertook to raise the minimum age for domestic work and light work of a seasonal nature from 12 to 13 years, and in *Austria*,<sup>930</sup> the Committee noted with interest that draft legislation proposes to raise the minimum age for light work and occasional work from 12 to 13 years.

#### Absence of a lower minimum age for light work

393. Many member States do not provide for a lower minimum age for light work.<sup>931</sup> In some cases, this is because the country has chosen not to avail itself of the flexibility clause offered by *Article 7* and does not regulate employment in these types of work.<sup>932</sup> However, in others, the country does choose to regulate light work for children under the general minimum age for admission to employment or work, but simply does not specify the minimum age required for children to become engaged in these types of work. In these cases, the Committee underlines that governments must take measures to ensure that the national legislation establishes a minimum age for admission to light work, in conformity with the Convention.<sup>933</sup> Some member States have responded positively, including in *Argentina*, where the Committee took note with satisfaction that section 189bis(1) of the Act on labour contracts, as added by the Act on the prohibition of child labour and protection of young workers, establishes that young persons aged over 14 years and less than 16 years may be employed in certain types of light work.<sup>934</sup>

**394. *While member States are generally not required to do so, adopting legislation regulating light work for children under the minimum age for admission to employment or work is encouraged by the Committee to ensure that children who in***

<sup>928</sup> See, for example, *Burkina Faso* – CEACR, direct request, 2009; *Burundi* – CEACR, direct request, 2010; *Dominica* – CEACR, observation, 2011; *Guinea* – CEACR, direct request, 2010; *Mozambique* – CEACR, direct request, 2010; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Seychelles* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2010.

<sup>929</sup> *Mali* – CEACR, direct request, 2010.

<sup>930</sup> *Austria* – CEACR, observation, 2011.

<sup>931</sup> In its report supplied under art. 19 of the ILO Constitution, the Government of Australia provided information on the legislation pertaining to the employment of children in light work activities in several provinces, according to which there is no minimum age for light work in New South Wales, South Australia, Victoria, Tasmania, the Northern Territory, and the Australian Capital Territory. In the report supplied by Canada under art. 19, several provinces seem to regulate light work without providing a minimum age for admission. Moreover, in its report supplied under art. 19, New Zealand indicated that it does not provide a minimum age for light work, although a number of provisions restrict the employment of young persons in such activities.

<sup>932</sup> See, for example, *Brazil* – CEACR, direct request, 2005; *China* – CEACR, direct request, 2006; *Oman* – CEACR, direct request, 2008; and *Serbia* – CEACR, direct request, 2008.

<sup>933</sup> See, for example, *Angola* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Grenada* – CEACR, direct request, 2009; *Malaysia* – CEACR, observation, 2010; *Nigeria* – CEACR, direct request, 2010; *Pakistan* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; and *Swaziland* – CEACR, direct request, 2007.

<sup>934</sup> *Argentina* – CEACR, observation, 2009. See also *Papua New Guinea* – CEACR, direct request, 2010 (the Government indicated that it was envisaging amending its legislation in order to raise the minimum age for light work from 11 to 13 years). In *Slovakia* – CEACR, direct request, 2006, the Committee noted the Government's statement that a proposal was being submitted to Parliament to supplement a section of the Labour Code which allowed light work, but did not indicate a minimum age. In the *United Kingdom* – CEACR, direct request, 2006, the Government confirmed, at the Committee's request, that by virtue of section 135 of the Children (Northern Ireland) Order, 1995, children under 13 years of age shall not be employed in light work.

*practice work under the minimum age are better protected. Indeed, the Committee has invited certain governments to take measures to avail themselves of the option provided for by Article 7 of the Convention in light of large numbers of children under the minimum age engaged in economic activity in practice.*<sup>935</sup> In some cases, member States have responded positively and have taken the Committee's comments into consideration, including in *Paraguay*, where the Committee noted the Government's indication that the National Committee for the Prevention and Elimination of Child Labour and the Protection of the Work of Young Persons considered necessary the determination of light work and that a debate on the issue would take place in 2010.<sup>936</sup>

### *Determination of the types and conditions of light work activities*

#### Types of light work activities

395. By virtue of Article 7(3) of the Convention, the competent authority shall determine the activities in which employment or work may be permitted for children 13–15 years (or 12–14 years) of age. When determining types of light work, member States have frequently specified the following:<sup>937</sup>

- (a) agricultural work, such as the gathering of flowers, herbs, mushrooms or fruit; picking, gathering, or sorting work performed in agricultural undertakings; harvesting; manual husking of fruits and seeds, the sorting of vegetable products; gardening and weeding; preparing, cleaning and packaging in small packets; picking tobacco; providing fodder and water to animals;
- (b) domestic work, such as light domestic tasks corresponding to the work of a kitchen assistant, assistant cook, houseboy or childminder; errand running;
- (c) work in commercial enterprises, such as shelving or pricing; work as a shop assistant, as well as service work, such as dishwashing or serving tables; clerical and cleaning work; the delivery of newspapers, milk, groceries, foodstuffs, flowers or drapery goods;
- (d) work in undertakings other than industrial undertakings, such as establishments, businesses or undertakings engaged in the sale and distribution of goods; administrative services; newspaper production and publication; the operation of hotels, restaurants and other places of public entertainment.

<sup>935</sup> See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Cameroon* – CEACR, direct request, 2007; *Comoros* – CEACR, direct request, 2010; *Eritrea* – CEACR, observation, 2011; *Gambia* – CEACR, direct request, 2010; *Iraq* – CEACR, direct request, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Mongolia* – CEACR, observation, 2010; *Montenegro* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; *South Africa* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010;; and *Trinidad and Tobago* – CEACR, direct request, 2011. In *Czech Republic* – CEACR, direct request, 2011, the Committee noted that no provisions regulate light work for children aged 13–15 years and requested the Government to indicate whether, in practice, children under the age of 15 years are employed in light work activities.

<sup>936</sup> *Paraguay* – CEACR, direct request, 2011. See also *Bahamas* – CEACR, direct request, 2008, where, after previously requesting the Government to provide information on measures envisaged to regulate light work activities considering the important number of children under 14 years who were economically active, the Committee noted that the newly adopted Child Protection Act, 2007, provides that a child under the age of 16 may be employed by the child's parents or guardian in light domestic, agricultural or horticultural work.

<sup>937</sup> *Austria* – CEACR, observation, 2011; *Chad* – CEACR, direct request, 2010; *Congo* – CEACR, direct request, 2010; *Côte d'Ivoire* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Estonia* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2010; *Singapore* – CEACR, direct request, 2010; *Swaziland* – CEACR, direct request, 2007; *Syrian Arab Republic* – CEACR, direct request, 2008; and *United Kingdom* – CEACR, direct request, 2006.



## Conditions of light work activities

396. *Article 7(3)* further provides that member States shall prescribe the number of hours during which and the conditions in which light work activities may be undertaken. In this respect, the Committee has consistently referred to Paragraph 13(1) of Recommendation No. 146, which provides that, in giving effect to *Article 7(3)*, special attention should be given to several key indicators, including the strict limitation of the hours spent at work in a day and in a week, the prohibition of overtime, the granting of a minimum consecutive period of 12 hours' night rest,<sup>938</sup> and the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.

397. The Committee has observed that in many cases member States have adopted legislation providing that the types of light work which children can undertake shall not be likely to be harmful to their health, safety, morals or development, nor such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received, as required by the Convention.<sup>939</sup> Many have also laid down the hours permitted for light work, namely between two and four-and-a-half hours per day and between ten and 25 hours per week,<sup>940</sup> while others prohibit night work.<sup>941</sup> Certain countries have established that the time spent at school and on light work shall not exceed a certain number of hours per day (four to seven hours) or per week;<sup>942</sup> others prohibit employment in light work during school term time, or permit it only during school holidays.<sup>943</sup> Some countries have established that children may be allowed to perform light work activities by virtue of regulations or permits granted by a certain authority, such as the Ministry of Labour or of Education, labour inspectors or medical officers,<sup>944</sup> only with parental consent,<sup>945</sup> or only within family enterprises.<sup>946</sup>

398. However, in a large number of cases, member States do not provide for all the conditions required by *Article 7* of the Convention when regulating light work. For example, a number of member States have not specified the number of hours during which and the conditions in which children may engage in light work activities, or the

<sup>938</sup> Art. 2 of the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90), defines the term "night" as a period of at least 12 consecutive hours, and states that, in the case of young persons under 16 years of age, this period shall include the interval between 10 p.m. and 6 a.m.

<sup>939</sup> See, for example, *Botswana* – CEACR, direct request, 2010; *Chile* – CEACR, direct request, 2005; *Kazakhstan* – CEACR, direct request, 2011; *Lebanon* – CEACR, observation, 2010; *Malta* – CEACR, direct request, 2007; *Slovenia* – CEACR, direct request, 2005; *Switzerland* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

<sup>940</sup> See, for example, *Argentina* – CEACR, observation, 2009; *Armenia* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, observation, 2009; *Chad* – CEACR, direct request, 2011; *Switzerland* – CEACR, direct request, 2010; and *Tajikistan* – CEACR, direct request, 2011.

<sup>941</sup> See, for example, *Azerbaijan* – CEACR, observation, 2009; and *Hungary* – CEACR, direct request, 2009.

<sup>942</sup> See, for example, *Botswana* – CEACR, direct request, 2010; *Côte d'Ivoire* – CEACR, direct request, 2009; *Japan* – CEACR, direct request, 2005; *Kyrgyzstan* – CEACR, direct request, 2010; and *Mauritania* – CEACR, direct request, 2010.

<sup>943</sup> See, for example, *Albania* – CEACR, observation, 2011; and *Chad* – CEACR, direct request, 2010.

<sup>944</sup> See, for example, *Barbados* – CEACR, direct request, 2010; *Belize* – CEACR, direct request, 2009; *Chad* – CEACR, direct request, 2010; *Congo* – CEACR, direct request, 2010; *Egypt* – CEACR, direct request, 2005; *Guatemala* – CEACR, direct request, 2009; and *Singapore* – CEACR, direct request, 2010.

<sup>945</sup> See, for example, *Côte d'Ivoire* – CEACR, direct request, 2009; *Hungary* – CEACR, direct request, 2009; *Republic of Korea* – CEACR, direct request, 2006; and *Kyrgyzstan* – CEACR, direct request, 2010.

<sup>946</sup> See, for example, *Argentina* – CEACR, observation, 2009; *Austria* – CEACR, observation, 2011; and *Sri Lanka* – CEACR, direct request, 2007.

types of light work in which children shall be permitted to be employed, in accordance with *Article 7(3)* of the Convention. The Committee has therefore requested many member States to take measures in order to ensure the protection of children participating in light work activities.<sup>947</sup> As a result, some countries have indicated that they would adopt legislative measures to apply these requirements.<sup>948</sup> The Committee encourages member States to take account, if they have not already done so, of the positive measures enumerated in the preceding paragraph.

#### Issues of application regarding legislation on light work

399. While it is up to the competent authorities of each member State to determine the conditions and types of light work in which children may be engaged, the Committee is of the view that certain activities or the conditions under which they are exercised do not constitute light work. In these cases, the Committee recalls the indications provided in Paragraph 13(1) of Recommendation No. 146 and expresses the hope that the governments concerned will take measures to determine the appropriate conditions, the number of hours or types of activities which constitute light work.<sup>949</sup>

400. Finally, the Committee has observed that some countries have availed themselves of the possibility of regulating light work by virtue of *Article 7*, but that a large number of children under the general minimum age for employment are found to be working in activities that do not constitute light work. In such cases, the Committee requests the governments concerned to take measures to strengthen the enforcement of their legislation pertaining to light work and to bring their national practice into conformity with the Convention by permitting employment in light work only for children who have reached the age specified for admission to these types of work, and by ensuring that children aged 13–15 (or 12–14) are only engaged in light work activities.<sup>950</sup>

## Enforcement and impact

### Monitoring mechanisms

401. The Committee wishes to underline the key role the labour inspectorate plays in implementing the Convention as a public authority which monitors compliance with

<sup>947</sup> See, for example, *Albania* – CEACR, observation, 2011; *Angola* – CEACR, direct request, 2011; *Armenia* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, observation, 2011; *Guinea* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

<sup>948</sup> See, for example, *Bahamas* – CEACR, direct request, 2009; *Botswana* – CEACR, direct request, 2010; *Cambodia* – CEACR, direct request, 2009; *Jamaica* – CEACR, direct request, 2011; *Kenya* – CEACR, observation, 2010; *Lebanon* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2010; *Mauritania* – CEACR, direct request, 2010; *Netherlands (Aruba)* – CEACR, observation, 2010; *Peru* – CEACR, direct request, 2009; *United Republic of Tanzania* – CEACR, direct request, 2010; *Tunisia* – CEACR, direct request, 2010; *Ukraine* – CEACR, observation, 2010; *Yemen* – CEACR, direct request, 2010; *Zambia* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

<sup>949</sup> See, for example, *Fiji* – CEACR, direct request, 2011 (the Committee expressed the view that permitting children aged 13–15 to work up to eight hours a day did not constitute light work). In *Georgia* – CEACR, observation, 2011, the Committee, noting that the legislation made it possible for young workers to work from 6 a.m. to 10 p.m. and for about eight hours per day, excluding school hours and night work, urged the Government to take the necessary measures to determine light work activities permitted for children aged 14–16 years and to prescribe the number of hours during which and the conditions in which light work may be undertaken by such persons.

<sup>950</sup> See *Indonesia* – CEACR, observation, 2011; and *Israel* – CEACR, direct request, 2011.

child labour-related provisions in each country.<sup>951</sup> Weak labour inspection machinery not only reduces the likelihood of the detection of violations related to child labour, but also hinders the appropriate punishment of those responsible.<sup>952</sup>

402. The vital role of the labour inspectorate is reflected in Paragraph 14(1) of Recommendation No. 146, which states that measures to ensure the effective application of the Convention should include the strengthening (as necessary) of labour inspection and related services. Moreover, the crucial nature of labour inspection in applying the Convention is reflected in the Committee's frequent references in relation to Convention No. 138 to its comments under the Labour Inspection Convention, 1947 (No. 81), and Convention No. 129.<sup>953</sup>

### *Good practices: Child labour and labour inspection*

#### Child labour related inspections

403. An encouraging development is the growing number of countries providing child labour training to labour inspectors,<sup>954</sup> or specifically assigning labour inspectors to monitor child labour. An example of this specific training is in *Argentina* where the National Plan for the Prevention and Elimination of Child Labour includes training workshops for labour inspectors.<sup>955</sup> In *Kazakhstan*, the National Information Resource Centre on child labour has organized training seminars for state labour inspectors on child labour issues.<sup>956</sup> Moreover, the Committee has noted with interest that in *Turkey*, six action programmes were implemented by the labour inspectorate in collaboration with ILO-IPEC, and that 108 labour inspectors were working full time on child labour.<sup>957</sup> Furthermore, in countries such as *Ecuador* and the *Bolivarian Republic of Venezuela*, specific "child labour inspections" are carried out.<sup>958</sup> In addition, in some member States, the role of the labour inspectorate in combating child labour has expanded beyond monitoring. Labour inspectors may be involved in raising awareness on issues related to child labour,<sup>959</sup> in addition to measures for the rehabilitation of removed child labourers or their reintegration into school.<sup>960</sup>

<sup>951</sup> See, for example, *Georgia* – CEACR, observation, 2011 (the Committee expressed concern that, following the abolishment of the labour inspectorate, there existed no public authority to monitor the implementation of child labour-related provisions in the country).

<sup>952</sup> *Pakistan* – CEACR, observation, 2011.

<sup>953</sup> See, for example, *Comoros* – CEACR, direct request, 2010; *Egypt* – CEACR, observation, 2011; *Nigeria* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

<sup>954</sup> Paragraph 14(1) of Recommendation No. 146 states that the strengthening of the labour inspectorate can take place through the special training of inspectors to detect abuses in the employment or work of children and young persons and to correct such abuses.

<sup>955</sup> *Argentina* – CEACR, observation, 2011.

<sup>956</sup> *Kazakhstan* – CEACR, direct request, 2011.

<sup>957</sup> *Turkey* – CEACR, observation, 2006.

<sup>958</sup> *Ecuador* – CEACR, observation, 2009; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>959</sup> See, for example, *Benin* – CEACR, direct request, 2011. In addition, the Government of Australia, in its report submitted under art. 19 of the Constitution, indicated that the Industrial Inspectorate in Western Australia implemented an education campaign relating to employment of under-age labour. The Government of Bangladesh also indicated in its report submitted under art. 19 that the Department of Inspection for Factories and Establishments implements preventive measures, such as motivational measures and counselling.

<sup>960</sup> *Jordan* – CEACR, observation, 2011.

## Employers' registers

404. One important tool used by labour inspectors to monitor the employment of young persons is employers' registers of employment. These registers (or similar documents) are required under *Article 9(3)* of the Convention and should contain the names and ages (or dates of birth) of all persons employed under the age of 18. These registers are to be made available to labour inspectors, and consulting these registers may aid labour inspectors in the detection of violations related to child labour. In some countries, these registers are sent directly to the labour inspectorate.<sup>961</sup> In countries where such records are kept, but not made available to inspectors, the Committee emphasizes that these registers must be made available.<sup>962</sup>

## Collaboration with other bodies

405. Paragraph 14(3) of the Recommendation states that the labour administration services should work in close cooperation with the services responsible for the education, training, welfare and guidance of children and young persons. In this regard, the Committee wishes to emphasize that cooperation with other bodies, including teachers and health professionals, may help to strengthen the effectiveness of the labour inspectorate in detecting and eliminating child labour. For example, in *Italy*, the General Directorate for Inspection collaborates with the local authorities, social services, schools and police forces to monitor child labour in areas where this phenomenon is most prevalent.<sup>963</sup>

### Role of the social partners

Trade unions and employers' organizations alike have an important role to play in bringing to light activities where child labour occurs. In this respect, the Committee highlights that full respect for organizational rights in all sectors provides an important cross-cutting impact between the fundamental Conventions on freedom of association and efforts to combat child labour. It is therefore opportune to draw attention to the positive trend in the collaboration between the labour inspectorate and the social partners to better address child labour. For example, in *Albania*, the local action committees of the child labour monitoring system include labour inspectors, as well as trade unions and employment officers.<sup>1</sup> In *Kazakhstan*, the Ministry of Labour and Social Security conducted nationwide mass action against child labour, including planned investigations by inspection agencies with the participation of trade unions, and this action resulted in the detection and remedying of several child labour violations.<sup>2</sup> Moreover, the Government of Australia indicates, in its report submitted under article 19 of the ILO Constitution, that in New South Wales the body responsible for inspecting child labour in the state frequently meets with employers to discuss child labour compliance issues.

<sup>1</sup> *Albania* – CEACR, direct request, 2009. <sup>2</sup> *Kazakhstan* – CEACR, direct request, 2011.

## Labour inspectorate and data dissemination

406. The labour inspectorate also plays an additional role of collecting and disseminating essential information on child labour violations, which is useful in assessing the implementation of the Convention.<sup>964</sup> Accordingly, the Committee

<sup>961</sup> *Romania* – CEACR, observation, 2010.

<sup>962</sup> *Indonesia* – CEACR, observation, 2011.

<sup>963</sup> *Italy* – CEACR, direct request, 2010.

<sup>964</sup> See, for example, *Albania* – CEACR, observation, 2011; and *Croatia* – CEACR, direct request, 2011.

consistently requests governments to provide information in their reports submitted under article 22 of the ILO Constitution on the number of inspections, the number and nature of violations detected relating to child labour (disaggregated, where possible, by sex and age) and the penalties applied. The reception of such information has allowed the Committee to make a more complete assessment of the application of the Convention.<sup>965</sup>

### *Strengthening the effectiveness of the labour inspectorate*

407. Increasingly, governments are identifying the weak capacity of the labour inspectorate as a major barrier to the effective implementation of the Convention.<sup>966</sup> This lack of capacity is generally attributed to a lack of financial and human resources.<sup>967</sup> These limitations may also severely hamper the capacity of the labour inspectorate to monitor child labour in particular regions or sectors. The Committee is of the view that the inability of the labour inspectorate to monitor outside a given area (such as outside the state capital) is particularly problematic when child labour is concentrated in regions<sup>968</sup> or sectors<sup>969</sup> outside the coverage of the labour inspectorate. In such cases, the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors.<sup>970</sup> However, it is important to underline that the weak capacity of the labour inspectorate is not only caused by limited resources; the Committee has, on several occasions, noted with concern indications from the social partners that labour inspection is ineffective in some countries due to corruption.<sup>971</sup>

**408. Moreover, in some countries the data from the labour inspectorate does not accurately reflect the prevalence of child labour in the country, due to a weak inspection system. Statistical studies indicate that child labour exists in a country, although the labour inspection has yet to detect any related violations.<sup>972</sup> To address all of these weaknesses, the Committee has systematically called on governments to take the necessary measures to adapt and strengthen the labour inspection services in**

<sup>965</sup> See, for example, *Egypt* – CEACR, observation, 2010; *Republic of Korea* – CEACR, direct request, 2010; *Pakistan* – CEACR, direct request, 2010; *Romania* – CEACR, observation, 2010; and *Viet Nam* – CEACR, direct request, 2010.

<sup>966</sup> For example, the Committee noted the indication by the Government of *Sudan* that the weak labour inspectorate contributed to the difficulty in applying the Convention. *Sudan* – CEACR, direct request, 2010.

<sup>967</sup> For example, the Committee noted the indication by the Government of *Netherlands (Aruba)* that control and enforcement of the labour legislation by labour inspectors was weak due to regulatory and financial challenges, and that labour inspection had not revealed any cases of child labour. The Government of *Saint Vincent and the Grenadines* indicated that the insufficient number of labour inspectors had limited the number of inspections conducted every year. In *Uruguay*, the Committee noted the Government's indication that one of the two main institutions responsible for monitoring the application of the Convention faced a shortage of human resources and had only five inspectors covering the entire country. See *Netherlands (Aruba)* – CEACR, observation, 2010; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; and *Uruguay* – CEACR, direct request, 2010.

<sup>968</sup> For example, in *Mozambique*, the Committee has noted that the labour inspectorate does not have the capacity to monitor areas outside the country's capital. See *Mozambique* – CEACR, direct request, 2010.

<sup>969</sup> Regarding sectors outside the reach of the labour inspectorate, reference may be made to child labour in the informal economy and in the agricultural sector.

<sup>970</sup> See, for example, *Albania* – CEACR, observation, 2011; and *Colombia* – CEACR, observation, 2011.

<sup>971</sup> See *China* – CEACR, observation, 2011 (the Committee noted the ITUC's allegation that collusion between private enterprises and local officials resulted in factory owners receiving advance warning of inspections, allowing the owners to hide working children or give the children the day off, which renders inspections meaningless). See also *Pakistan* – CEACR, observation, 2011.

<sup>972</sup> See, for example, *Cameroon* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *Serbia* – CEACR, direct request, 2010.

*order to improve their capacity to detect cases of child labour.*<sup>973</sup> *This is particularly important in countries where the legislation complies with the Convention, but the application of the Convention in practice is weak. Due to the importance of the labour inspectorate in applying the Convention, the Committee has, in cases where limited resources contribute to the weakness of the labour inspectorate, encouraged the allocation of additional resources to address the capacity of this institution.*<sup>974</sup> *Moreover, in cases where labour inspectors do not appear to have adequate sensitivity to child labour issues, the Committee has called on governments to take measures to ensure that labour inspectors have received adequate training in this area.*<sup>975</sup>

409. In addition to the detection of cases of child labour, a strong labour inspectorate is crucial for the effective application of penalties for violations related to child labour. This complementary role is reflected in the case of *Mauritius*, where the Committee has noted with interest that the Labour and Industrial Relations Officers undertook systematic inspections at all places of work, including the formal and informal sectors of employment, and that where cases of child labour were detected, criminal action was taken against the offenders, including the application of appropriate penalties.<sup>976</sup> As labour inspectors on the ground are often responsible for imposing the penalties contained in legislation, laxity in this regard jeopardizes the implementation of the Convention. For example, in some countries, labour inspectors offer advice upon the detection of violations related to child labour, rather than applying penalties.<sup>977</sup> In this regard, the Committee emphasizes the importance of ensuring that child labour violations detected by the labour inspectorate are met with appropriate penalties.

## Penalties

410. *Article 9(1)* of the Convention requires that all necessary measures, including the provision of appropriate penalties, be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention. While the adoption of national legislation is essential as it establishes a framework within which society determines its responsibilities with regard to young persons, even the best legislation only takes value when it is applied effectively.<sup>978</sup> Moreover, Paragraph 15(a) of Recommendation No. 146 specifies that special attention should be paid to the enforcement of provisions concerning employment in hazardous types of employment or work.

<sup>973</sup> See, for example, *Netherlands (Aruba)* – CEACR, observation 2010; *Lesotho* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *Uganda* – CEACR, direct request, 2010.

<sup>974</sup> See, for example, *Mozambique* – CEACR, direct request, 2010.

<sup>975</sup> See, for example, *Armenia* – CEACR, direct request, 2011.

<sup>976</sup> *Mauritius* – CEACR, observation, 2010.

<sup>977</sup> For example, in *Morocco* – CEACR, observation, 2010, the Committee has noted that labour inspectors provide advice and information to employers on the dangers of child labour before resorting to penalties. Similarly, the Committee has noted that, in *Jordan* – CEACR, observation, 2011, the great majority of child labour violations detected in the course of investigations did not result in penalties, but in advice and guidance, and that inspectors often handled child labour cases informally rather than issuing citations and fines.

<sup>978</sup> *Fundamental rights at work and international labour standards* (Geneva, ILO, 2003), p. 102.

*Adopting appropriate penalties to ensure the effective enforcement of the Convention*

Penalties for violations of the prohibitions on minimum age and hazardous work

411. Many countries have adopted penalties that have been deemed appropriate by the Committee, and these have been provided for in a wide range of ways – through the application of labour and/or penal legislation, resulting in fines and/or administrative penalties and/or prison sentences.<sup>979</sup> For example, in *Côte d'Ivoire*, the Committee noted with satisfaction that, under section 19 of Act No. 2010-272 of 30 September 2010, anyone who has a child in their care or supervises a child if they are in charge of the child's education or his or her intellectual development or vocational training, who knowingly forces or allows that child to carry out hazardous work, shall be liable to a prison sentence of between one and five years.<sup>980</sup> In *Grenada*, the Committee observed that section 35 of the Employment Act establishes that any person who contravenes section 32 of this Act, which pertains to the prohibition of child labour, commits an offence and is liable on summary conviction to a fine not exceeding US\$10,000 or to a term of imprisonment not exceeding three years, or both.<sup>981</sup>

Penalties for non-enrolment and non-attendance at school

412. Some countries have also adopted penalties to which parents may be liable when their children are not enrolled or do not attend school. For example, the Committee noted that an Education Bill, subsequently enacted as the Education Act, makes primary school free and compulsory in *Lesotho*, and that this Bill includes sanctions for parents if they do not send their children to school.<sup>982</sup> Similarly, the Education Act of *Jamaica* imposes fines or penalties of imprisonment in case of violations of the provisions regarding compulsory education, and in *Morocco*, the Dahir of 13 November 1963 on compulsory

<sup>979</sup> See, for example, *Belize* – CEACR, direct request, 2006; *Brazil* – CEACR, direct request, 2005; *Central African Republic* – CEACR, observation, 2010; *China (Macau Special Administrative Region)* – CEACR, direct request, 2005; *Djibouti* – CEACR, direct request, 2009; *Egypt* – CEACR, direct request, 2005; *El Salvador* – CEACR, direct request, 2005; *Estonia* – CEACR, direct request, 2011; *Fiji* – CEACR, direct request, 2006; *Hungary* – CEACR, direct request, 2009; *Israel* – CEACR, direct request, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2008; *Lithuania* – CEACR, direct request, 2002; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2005; *Republic of Moldova* – CEACR, direct request, 2010; *Montenegro* – CEACR, direct request, 2010; *Oman* – CEACR, direct request, 2008; *Qatar* – CEACR, direct request, 2009; *Romania* – CEACR, direct request, 2004; *Senegal* – CEACR, direct request, 2006; *Serbia* – CEACR, direct request, 2006; *Singapore* – CEACR, direct request, 2008; *Sri Lanka* – CEACR, direct request, 2004; *Sudan* – CEACR, direct request, 2007; *Thailand* – CEACR, direct request, 2010; *Trinidad and Tobago* – CEACR, direct request, 2009; *Turkey* – CEACR, observation, 2006; *United Arab Emirates* – CEACR, direct request, 2010; *United Republic of Tanzania* – CEACR, direct request, 2007; and *Viet Nam* – CEACR, direct request, 2006. In its report submitted under art. 19 of the ILO Constitution, the Government of Australia provided information about a variety of penalties to which persons who violate the laws pertaining to the employment of children, such as the minimum age for admission to work and the prohibition of hazardous work, are liable according to each province's legislation, and which are accumulated through a system of penalty units. Similarly, in its report submitted under art. 19, the Government of the United States indicated that for child labour violations, employers are subject to a civil monetary penalty of up to US\$11,000 per worker for each violation of the child labour provisions. In addition, employers are subject to a civil monetary penalty of US\$50,000 for each violation that causes the death or serious injury of any minor employee – such penalties may be doubled, up to US\$100,000, when the violations are determined to be wilful or repeated.

<sup>980</sup> *Côte d'Ivoire* – CEACR, observation, 2011.

<sup>981</sup> *Grenada* – CEACR, direct request, 2007.

<sup>982</sup> *Lesotho* – CEACR, observation, 2011.

schooling, as amended by Act No. 04.00 of 25 May 2000, requires parents to enrol their children in school, failing which they face penalties.<sup>983</sup>

### *Issues of application regarding penalties*

#### Absence of penalties in national legislation

413. Certain countries have indicated that, according to their legislation, persons who violate the national provisions giving effect to the Convention commit an offence, but their legislation has not established the specific penalties applicable in cases of violation, or has not provided penalties for every potential child labour offence. In these cases, the Committee has requested the governments concerned either to indicate the provisions which establish penalties for breaches of the provisions giving effect to the Convention,<sup>984</sup> or to take measures to establish such penalties in order to ensure the effective enforcement of the Convention.<sup>985</sup>

#### Insufficiently deterrent penalties

414. Moreover, while it is up to each country to determine its own penalties, some have established sanctions that are not dissuasive enough to ensure the enforcement of the Convention and deter employers from resorting to child labour, and are therefore inadequate. In such cases, the Committee has requested the governments concerned to take the necessary measures to adopt legislation that will establish appropriate and effective penalties for violations of the provisions relating to child labour.<sup>986</sup> For example, in *Kuwait*, after noting that the fines imposed on employers violating the provisions of Act No. 38 of 1964 on labour in the private sector were low and inviting the Government to take measures to revise and increase those penalties in accordance with *Article 9(1)* of the Convention, the Committee subsequently noted that the draft Labour Law included harsher sanctions than the ones set out in the previous Labour Code.<sup>987</sup> Moreover, in order to assess the adequateness of the penalties established by some member States, the Committee has requested governments to provide information on the application of these penalties in practice in cases of violations of the provisions on the employment of children and young persons, including the number and nature of the

<sup>983</sup> *Jamaica* – CEACR, direct request, 2009; and *Morocco* – CEACR, observation, 2010. Similarly, in its report submitted under art. 19 of the ILO Constitution, the Government of New Zealand indicated that the Education (National Standards) Amendment Act of 2008 introduced increased penalties for non-enrolment and non-attendance at school. Section 24 increases the maximum financial penalty for non-enrolment of compulsory school-age children from NZD\$1,000 to NZD\$3,000, and section 29 increases the financial penalty for irregular attendance from NZD\$150 to NZD\$300 for a first offence and from NZD\$400 to NZD\$3,000 for a second or subsequent offence. Furthermore, an offender of the Health and Safety in Employment Act is liable to a fine up to NZD\$250,000.

<sup>984</sup> *Azerbaijan* – CEACR, observation, 2011; *Belarus* – CEACR, observation, 2007; *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2009; and *Paraguay* – CEACR, direct request, 2011. In its report submitted under art. 19 of the ILO Constitution, the Government of Bangladesh indicated that the use of all forms of child labour is prohibited by virtue of section 4 of the Bangladesh Labour Act of 2006 and that the breach of this provision is a punishable offence, as envisaged under section 284 of the Act. The Government of Canada also indicates, in its report under art. 19, that all provincial jurisdictions have appropriate enforcement and penalty provisions under occupational safety and health and employment standards legislation.

<sup>985</sup> *Czech Republic* – CEACR, direct request, 2011.

<sup>986</sup> See, for example, *Bahamas* – CEACR, direct request, 2009; *Burundi* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Mongolia* – CEACR, observation, 2010; and *Nigeria* – CEACR, direct request, 2010.

<sup>987</sup> *Kuwait* – CEACR, observation, 2008.



penalties imposed.<sup>988</sup> The Committee requests the governments concerned to adopt penalties that are sufficiently dissuasive.

## Statistical information

### Global picture

#### Incidence of child labour in the world

The Global Report of 2010 indicates that, in general, child labour in the age group 5–17 years has continued to decline over the last four years. However, the rate of decline has slowed down and child labour was still affecting 215 million children in the world in 2008. In the age group 5–14 years, there were 153 million children engaged in child labour in 2008.<sup>1</sup> Little more than one third of them, that is to say 53 million or 4.3 per cent of all children aged 5–14, were involved in hazardous activities, and approximately 63 million, or 16.9 per cent of all children aged 15–17, were involved in hazardous work.<sup>2</sup> Between 2004 and 2008, a decline of 10 per cent in the number of children aged 5–14 in child labour and a decline of 31 per cent in the number of these children engaged in hazardous work was observed in all regions,<sup>3</sup> except for sub-Saharan Africa.<sup>4</sup> In contrast, the trends for the older age group (15–17 years old) reversed, as child labour in this age group increased globally by 20 per cent between 2004 and 2008.<sup>5</sup> As for regional estimates, the Global Report of 2010 highlights that the Asia and the Pacific region has the largest numbers of child labourers aged 5–17 years (113.6 million), followed by sub-Saharan Africa (65.1 million) and Latin America and the Caribbean (14.1 million). However, in terms of relative extent, the incidence of child labour is more prevalent in sub-Saharan Africa, where one-in-four children and adolescents are child labourers, compared to around one-in-eight in Asia and the Pacific and one-in-ten in Latin America and the Caribbean.<sup>6</sup>

<sup>1</sup> *Accelerating action against child labour*, op. cit., para. 22, and table 1.1. <sup>2</sup> *ibid.* <sup>3</sup> *ibid.*, para. 24 and table 1.1. <sup>4</sup> *ibid.*, para. 33 and table 1.5. In sub-Saharan Africa, the number of children in employment increased from 49.3 million to 58.2 million between 2004 and 2008. <sup>5</sup> *ibid.*, para. 25 and table 1.1. <sup>6</sup> *ibid.*, para. 30.

## Achieving universal primary education by 2015:

### A global overview<sup>989</sup>

415. The goal of universal primary education by 2015 is a key target of the global community under the umbrella of the Millennium Development Goals. This provides an important opportunity to maximize respect for ILO Conventions with regard to the protection of children. In its General Report in 2009, the Committee devoted a section to highlights relating to Convention No. 138 in which it emphasized that the primary school attendance rate is one of the factors that is bound to influence the situation of children who are compelled to work. In this regard, the Committee has analysed trends in school enrolment, attendance and drop-out rates in respect of children under the minimum age and the relationship between progress towards achieving education for all and the progressive elimination of child labour.

<sup>988</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2005; *Colombia* – CEACR, observation, 2011; *Cuba* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; *Hungary* – CEACR, direct request, 2009; *Latvia* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; *Swaziland* – CEACR, direct request, 2007; and *Uganda* – CEACR, direct request, 2010.

<sup>989</sup> The information provided in this section is drawn from UNESCO *Education for All Global Monitoring Report 2011: The hidden crisis: Armed conflict and education* (Paris, 2011), pp. 40–41.

416. According to the UNESCO *Education for All Global Monitoring Report 2011*, there has been rapid progress in the past decade towards the goal of universal primary education.<sup>990</sup> Between 1999 and 2008, the net primary enrolment rate increased globally by 7 per cent. However, the rate of progress appears to have slowed down between 2004 and 2009. There were globally 68 million children out of school in 2008 and, despite the progress made in sub-Saharan Africa and South-West Asia, 69 per cent of all out-of-school children still live in these two regions. The 15 countries with the largest out-of-school population of children in 2008 are mostly developing countries, but also include middle-income countries.<sup>991</sup>

### *General picture of the situation in practice in member States*

#### Measuring the magnitude of child labour

417. Statistical information on the number of children working is available for a considerable number of member States. In most cases, this information is either provided by national child labour or labour force surveys conducted by national institutes of statistics, IPEC–Statistical Information and Monitoring Programme on Child Labour (SIMPOC), IPEC studies, UNICEF Multiple Indicator Cluster Surveys (MICS) or Understanding Children’s Work (UCW) country reports.<sup>992</sup> In their reports supplied under article 19 of the ILO Constitution, the Governments of Australia and Bangladesh also indicated that surveys on child labour have been recently conducted.

418. Furthermore, the Committee has recently noted that new surveys were about to be conducted or data compiled in the following countries: *Albania, Belize, Chile, Egypt, Malawi, Niger, Pakistan and Zimbabwe*.<sup>993</sup> In the cases of *Mozambique and Trinidad and Tobago*, child labour surveys are planned to be conducted in the near future.<sup>994</sup>

419. However, in some countries, the Committee has found that statistical information on the employment of children and young persons is lacking and has therefore encouraged the governments concerned to take the necessary measures to ensure that sufficient up-to-date data on the situation of working children is made available.<sup>995</sup>

<sup>990</sup> Great strides have been made in sub-Saharan Africa and South-West Asia. In the past decade, Sub-Saharan Africa has increased its net primary enrolment ratio by 31 per cent and drop-out rates have decreased by 32 per cent, while the number of out-of-school children has halved in South-West Asia.

<sup>991</sup> These are Bangladesh, *Brazil, Burkina Faso, Ethiopia, Ghana, India, Kenya, Mozambique, Niger, Nigeria, Pakistan, Philippines, South Africa, Thailand* and *Yemen*.

<sup>992</sup> The UCW Programme is an inter-agency research cooperation initiative involving the ILO, UNICEF and the World Bank.

<sup>993</sup> See *Albania* – CEACR, observation, 2011; *Belize* – CEACR, direct request, 2011; *Chile* – CEACR, direct request, 2011; *Egypt* – CEACR, observation, 2011; *Malawi* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>994</sup> See *Mozambique* – CEACR, direct request, 2010; and *Trinidad and Tobago* – CEACR, direct request, 2011.

<sup>995</sup> See *Chad* – CEACR, direct request, 2010; *Estonia* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; *Jamaica* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2011; *Malaysia* – CEACR, observation, 2010; *Republic of Moldova* – CEACR, direct request, 2010; *Netherlands* – CEACR, direct request, 2010; *Paraguay* – CEACR, direct request, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010; *Trinidad and Tobago* – CEACR, direct request, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

### *Magnitude of child labour*

420. With regard to cases of progress, in *Turkey*, the percentage of working children between the ages of 6–14 fell from 8.8 per cent in 1994 to 5.1 per cent in 1999 and to 2.6 per cent in 2006.<sup>996</sup> In *Kenya*, the incidence of child labour decreased from 1.9 million in 1998 to 951,273 in 2005, and in *Nicaragua* child labour has fallen by around 6 per cent since 2000.<sup>997</sup>

421. ***However, in some countries the incidence of child labour is relatively high and often affects one in three children or even more.***<sup>998</sup> ***Moreover, in a few countries, child labour even affects more than one in two children.***<sup>999</sup>

422. ***In such cases, the Committee must express its serious concern at the high number of children working under the minimum age and accordingly strongly urges the governments concerned to intensify their efforts to tackle the situation of child labour in the country and put an end to the economic exploitation of children.***

### *Education*

423. The Committee has observed that in some countries more children have been integrated into the educational system in recent years, thus contributing to the fight against child labour. For example, according to the UNESCO 2010 *Education for All Global Monitoring Report*, *Benin* is one of the countries that has made the most rapid progress towards the objective of universal primary education.<sup>1000</sup> The Committee has also observed that the total number of out-of-school children at primary school age has

<sup>996</sup> *Turkey* – CEACR, observation, 2011.

<sup>997</sup> See *Kenya* – CEACR, observation, 2010; and *Nicaragua* – CEACR, observation, 2009.

<sup>998</sup> For example, UNICEF statistics indicate that 29 per cent of children between the ages of 5–14 years are engaged in work in *Togo*. See *Togo* – CEACR, observation, 2011. Recent national surveys have revealed that nearly one third of children under 11 years of age were engaged in child labour out of which two-thirds undertook hazardous activities in *Benin* in 2008; more than 30 per cent of children in the 10–14 age group were economically active in *Madagascar* in 2007; and 31.1 per cent of children aged from 5 to 14 years were involved in economic activity in *Uganda* in 2005. See *Benin* – CEACR, direct request, 2011; *Madagascar* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2010. The *Malawi* MICS for 2006 indicates that over 30 per cent of children between 5 and 14 years, i.e. 1.4 million children, are involved in an economic activity. See *Malawi* – CEACR, observation, 2011. In *Côte d'Ivoire*, approximately 35 per cent of children between 5–14 years were working in 2008 according to UNICEF statistics and, according to ILO statistics for 2000, over 36 per cent of children between 10–14 years of age were economically active in 2000 in *Chad*. See *Côte d'Ivoire* – CEACR, observation, 2011; and *Chad* – CEACR, direct request, 2010. Finally, 42 per cent of children between the ages of 5–14 years were involved in child labour in *Zimbabwe* in 2004 and, according to the ILO–IPEC Rapid Assessment Survey, 68 per cent of child agricultural workers surveyed and 53 per cent of child domestic workers surveyed were 14 years old and younger. See *Zimbabwe* – CEACR, observations, 2008 and 2011.

<sup>999</sup> This is particularly the case of *Cameroon*, where 51 per cent of children aged 10 to 14 years are working according to a national survey on child labour published in 2008; *Central African Republic*, where 57 per cent of children between the ages of 5 and 14 years are engaged in work according to UNICEF statistics for 2007; *Mali*, where the National Survey Report on child labour of 2005 shows that 65.4 per cent of children between the ages of 5 and 14 years are engaged in work; and *Ethiopia*, where the Committee has noted with serious concern that according to a National Child Labour Survey of 2001, 84.5 per cent of the child population were engaged in economic activities and 81.2 were under the age of 15. See *Cameroon* – CEACR, observation, 2011; *Central African Republic* – CEACR, observation, 2010; *Mali* – CEACR, direct request, 2010; and *Ethiopia* – CEACR, observation, 2010.

<sup>1000</sup> See *Benin* – CEACR, direct request, 2011.

dropped from 1,574,000 children in 1999 to 954,000 in 2006 in *Mozambique* and from 3.4 per cent in 1998 to 1.6 per cent in 2008 in *Tunisia*.<sup>1001</sup>

### *Differences in enrolment rates between boys and girls*

424. Even though important advances have been registered in the past decade, the situation remains alarming and a large number of countries are far from reaching the goal of universal primary education by 2015. Among the difficulties observed, the Committee has noted that there is an important gap between school enrolment ratios for girls and boys.<sup>1002</sup>

### *Enrolment rates in primary and secondary education and out-of-school children*

425. In other countries, while the enrolment rate in primary education is relatively high, in secondary education it is very low, even though children of secondary education age may be under the minimum age for admission to employment or work.<sup>1003</sup> Finally, in some countries a very high proportion of school-age children are not attending school.<sup>1004</sup>

426. Considering that free and compulsory education is one of the most effective means of combating child labour, the Committee calls on the governments concerned to take the necessary measures to improve the functioning of the education system, in particular by increasing school enrolment and attendance rates of both boys and girls under the minimum age for admission to employment or work at the primary as well as the secondary level, so as to prevent the engagement of these children in child labour.

<sup>1001</sup> See *Mozambique* – CEACR, direct request, 2010; and *Tunisia* – CEACR, direct request, 2010.

<sup>1002</sup> This is the case in *China*, where two-thirds of non-enrolled school-age children are girls; in *Côte d'Ivoire*, where the net school attendance rate in primary education is 66 per cent for boys compared to 57 per cent for girls and 32 per cent for boys in secondary school compared to only 22 per cent for girls; and in *Yemen*, where the overall gross enrolment rate was 83 per cent for boys, and only 64 per cent for girls in 2007–08. See *China* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; and *Yemen* – CEACR, direct request, 2010.

<sup>1003</sup> This was found in *Mauritania*, where only 15 per cent of girls and 16 per cent of boys are enrolled in secondary education, and in *Uganda*, where the net enrolment rate in primary education is 95 per cent, while the net enrolment rate in secondary education is only 23.5 per cent. See *Mauritania* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2010.

<sup>1004</sup> For example, in *Lesotho*, where there were approximately 100,000 out-of-school children between the ages of 6–12 in 2007; in *Philippines*, where the number of children who are not able to go to school is increasing and is estimated at 4.2 million; and in *Oman*, where the total number of out-of-school children rose from 61,000 in 1999 to 82,000 in 2006. See *Lesotho* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2010; and *Oman* – CEACR, observation, 2010.

## Chapter 2

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

#### Introduction

427. Eliminating the worst forms of child labour is a universal absolute. It raises the challenge of immediacy, activating the range of fundamental rights encompassed by this Survey. For instance, freedom of association and collective bargaining are at the heart of facilitating a participatory approach to tackling the worst forms of child labour. Moreover, there are forms of child labour that are tantamount to forced labour, and fall into the category of the worst forms that are to be prohibited and eliminated. This is further advanced by the principles of non-discrimination and equality to offer an umbrella of protection for all.

428. The unanimous adoption of Convention No. 182 by the Conference in 1999 reflected tripartite consensus and commitment among ILO constituents that certain forms of child labour demanded urgent and immediate action for their prohibition. This milestone was the culmination of an in-depth examination and numerous consultations, aimed at creating a Convention with universal applicability and guaranteed relevance. The speed of ratification of Convention No. 182, which has received 174 ratifications to date, is unparalleled in the history of ILO standards-related activities. Undoubtedly, this reflects a major political will to eradicate child labour, especially its worst forms.

#### **Defining the worst forms of child labour – Article 3 of Convention No. 182**

Convention No. 182 enumerates in detail in *Article 3* the types of work which constitute the worst forms of child labour. The Convention sets forth the principle that these forms of child labour cannot be tolerated by member States, whatever their level of development or national circumstances, and therefore cannot be subject to progressive elimination.<sup>1</sup>

#### **Article 3 of Convention No. 182**

For the purposes of the Convention, the term *the worst forms of child labour* comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

<sup>1</sup> *Child labour*, Report IV(2A), ILC, 87th Session, Geneva, 1999, Office commentary, p. 34. This is in contrast to the approach taken in Convention No. 138, which aims to progressively eliminate child labour and raise the minimum age for admission to employment.

429. Under *Article 1* of the Convention, each “Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.” The measures taken must ensure not only the prohibition of the worst forms of child labour in law, but also their elimination in practice. The Convention therefore takes a holistic approach to combating the worst forms of child labour, and its preamble states that the effective elimination of the worst forms of child labour requires both immediate and comprehensive action.<sup>1005</sup> This complex instrument therefore encompasses penal law, labour law and programmatic components, requiring member States to take action on all of these fronts.

430. The Convention is unique in view of the central importance given to programmatic initiatives: implementing such measures is essential for the full application of the Convention, in conjunction with appropriate legislative action. In this regard, *Article 6* of the Convention states that Members shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.<sup>1006</sup> The adoption of the Convention resulted in the formulation of programmes of action to combat the worst forms of child labour in a large number of member States. Between 2006 and 2009, the Committee noted the adoption of over 90 national plans of action.<sup>1007</sup> Special national action plans for the elimination of the worst forms of child labour have been adopted in a wide range of member States.<sup>1008</sup>

431. Moreover, consistent with the holistic approach of Convention No. 182, *Article 7(2)* requires member States to take effective and time-bound measures to address the worst forms of child labour, taking into account the importance of education in eliminating child labour. These time-bound measures complement legislative action, and are often taken within the context of *time-bound programmes (TBP)*. The *TBP* approach is a

<sup>1005</sup> Preamble of Convention No. 182.

<sup>1006</sup> Pursuant to *Art. 6(2)*, such programmes shall be designed and implemented in consultation with relevant government institutions and employers’ and workers’ organizations, taking into consideration the views of other concerned groups as appropriate. Moreover, Para. 2 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190) indicates that this can include taking into consideration the views of children directly affected by the worst forms of child labour and their families. In this regard, the Committee has urged several governments that are designing or revising a national action programme to ensure child participation in the process. See, for example, *Angola* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2011.

<sup>1007</sup> *Accelerating action against child labour*, op. cit., fig. 1.10. This may include not only plans of action to combat the worst forms of child labour, but also plans to combat child labour in all its forms.

<sup>1008</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; *Cape Verde* – CEACR, direct request, 2011; *Colombia* – CEACR, direct request, 2011; *Costa Rica* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2008; *Ghana* – CEACR, direct request, 2011; *Indonesia* – CEACR, observation, 2011; *Jordan* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2008; and *Thailand* – CEACR, direct request, 2011.

means developed by ILO–IPEC to assist countries in fulfilling their obligations to take time-bound measures under the Convention. **TBPs** are composed of integrated and coordinated policies and programmes to prevent and eliminate a country’s worst forms of child labour within a defined period of time, usually ranging from five to 15 years. They address the root causes of child labour, linking action against child labour with the national development effort, with particular emphasis on economic and social policies to combat poverty and to promote universal basic education and social mobilization.<sup>1009</sup>

432. Convention No. 182 is the most recent of the fundamental Conventions, and this is the first time the Convention has been examined in a General Survey. While much progress has been made since the adoption of the Convention, the worst forms of child labour persist in both developed and developing countries around the world. The number of children in hazardous work, often used as a proxy for measuring the extent of the worst forms of child labour, is today approximately 115 million children. This chapter examines the remaining challenges for the full implementation of the Convention, as well as the important trends in its application, in both law and practice, and its significant impact in the relatively short period of time since its adoption.

## Scope and methods of application

### Scope of application

433. Convention No. 182 has a broad scope of application, applying to all children under 18 years of age. Specifically, *Article 2* of the Convention specifies that for the purposes of the Convention, “the term ‘child’ shall apply to all persons under the age of 18”. The Convention focuses very specifically on only the most extreme forms of child labour (that is the worst forms), and this narrow focus permits a wide scope of application to all children.<sup>1010</sup> The Convention therefore applies equally to boys and girls, citizens and non-citizens, employed and self-employed children, as well as legal and illegal work. Unlike Convention No. 138, which contains several flexibility clauses, Convention No. 182 does not permit exceptions. This is a reflection of the principle underlying the Convention that certain forms of child labour are so intolerable that there can be no exceptions to this age.<sup>1011</sup> Moreover, the definitions of the worst forms of child labour outlined in *Article 3(a)–(c)* are universal and apply uniformly in all countries that have ratified the Convention.

434. Pursuant to *Article 4(1)*, the determination of the types of hazardous work is done by each State, after consultation with the employers and workers concerned. While Recommendation No. 190 provides guidelines on what types of work should be included in this determination, the types of prohibited hazardous work differ from country to country, based on the determination by the competent authority. In this regard, work identified as hazardous (and therefore a worst form of child labour) in one country may not be defined as a worst form of child labour in another. This allows member States to

<sup>1009</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), 99th Session, Geneva, 2010, General Report, para. 68.

<sup>1010</sup> *Child labour*, 1999, op. cit., p. 19 (Office commentary).

<sup>1011</sup> *ibid.*, p. 39 (Office commentary). It is also important to underline that the minimum age of 18 for these worst forms does not imply that any of these forms of labour are tolerable for persons over 18. The Convention addresses only the prohibition of these forms for children, and should not be interpreted as indicating that these forms of labour are acceptable for adults (i.e. persons over the age of 18). See *Child labour*, Report VI(2), ILC, 86th Session, Geneva, 1998, p. 41.

take account of national circumstances which may make certain types of work hazardous, and to adapt the scope of the Convention accordingly.<sup>1012</sup>

435. The Convention's geographical scope of application is not explicitly addressed in the Convention, unlike that of Convention No. 138.<sup>1013</sup> While the Convention is implemented through national legislation, and within national territories, the Committee has also observed several underlying elements of extra-territorial application. This includes the growing trend of countries which are enacting legislation providing for the liability of national citizens who engage children in the worst forms of child labour outside the national territory. This possibility is envisaged in Paragraph 15(d) of Recommendation No. 190.<sup>1014</sup> For example, the Committee has noted with interest that section 376C of the Penal Code of *Singapore* makes it an offence for any Singaporean citizen, or a permanent resident of *Singapore*, to obtain for consideration the sexual services of a person under 18 years of age outside *Singapore*.<sup>1015</sup> In addition, the Committee has noted that many States engage in significant international cooperation for the purpose of combating the worst forms of child labour, in conformity with *Article 8* of the Convention, and that this facilitates the effective application of the Convention both inside and outside a State's own national territory.

## Methods of application

436. The Convention takes a holistic approach to combating the worst forms of child labour, and is therefore applied by a combination of legislative, policy and programmatic measures (in particular, effective and time-bound measures), in addition to international cooperation initiatives.

437. The immediate prohibition of the worst forms of child labour (pursuant to *Articles 1 and 3* of the Convention) is predominantly applied by member States through legislation. In some countries, specific acts have been adopted for the purpose of implementing the Convention. For example, the Committee noted with satisfaction the adoption in *Côte d'Ivoire* of Act No. 2010-272 prohibiting trafficking and the worst forms of child labour, and it noted with interest the adoption in the *Philippines* of an Act providing for the elimination of the worst forms of child labour (Act No. 9231).<sup>1016</sup> Nonetheless, the main legislation used in most countries to implement *Article 3* of the Convention is criminal law,<sup>1017</sup> particularly for the offences enumerated in *Article 3, clauses (a)–(c)*. In many countries, this penal legislation is supplemented by specific acts prohibiting trafficking,<sup>1018</sup> sexual offences<sup>1019</sup> and drug offences,<sup>1020</sup> which play an

<sup>1012</sup> *Child labour*, 1999, op. cit., p. 65 (Office commentary).

<sup>1013</sup> For example, *Art. 2(1)* of Convention No. 138 provides that ratifying States shall specify "a minimum age for admission to employment or work within its territory and on means of transport registered in its territory".

<sup>1014</sup> Para. 15(d) of Recommendation No. 190 states that measures for the abolition of child labour could include providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour, even when these offences are committed in another country.

<sup>1015</sup> *Singapore* – CEACR, direct request, 2010. See also paras 542–546 below.

<sup>1016</sup> *Côte d'Ivoire* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2008.

<sup>1017</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Colombia* – CEACR, direct request, 2011; *Israel* – CEACR, direct request, 2011; and *Lao People's Democratic Republic* – CEACR, direct request, 2010.

<sup>1018</sup> See, for example, *Argentina* – CEACR, observation, 2011 (Act No. 26.364 of 2008 on the prevention of trafficking); *Ghana* – CEACR, direct request, 2011 (Human Trafficking Act); and *Jordan* – CEACR, observation, 2011 (Prevention of the Trafficking in Persons Act (Act No. 9 of 2009)).

<sup>1019</sup> See, for example, *Jamaica* – CEACR, direct request, 2011 (Child Pornography (Prevention) Act); and *United Kingdom* – CEACR, direct request, 2011 (Sexual Offences Act).



important role in implementing *Article 3, clauses (a), (b) and (c)*, respectively. Military or defence legislation also often contains provisions prohibiting the recruitment of persons under 18 into the armed forces, as stipulated in *Article 3, clause (a)*.<sup>1021</sup> Child protection acts may also be important legislative texts for the implementation of the Convention containing provisions prohibiting the worst forms of child labour,<sup>1022</sup> in addition to provisions establishing child protection agencies.<sup>1023</sup> The prohibition of hazardous work (pursuant to *Article 3, clause (d)* of the Convention) is generally contained in the Labour Code or in related regulations.<sup>1024</sup>

438. The Committee wishes to emphasize that the Convention calls for not only the prohibition of the worst forms of child labour, but also for their elimination. Therefore, while national legislation is a key method of application, the Convention's full implementation requires significant programmatic measures. This is reflected in *Article 6* of the Convention, which states that each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour, in consultation with relevant government institutions and employers' and workers' organizations.

439. The application of the Convention also requires member States to take effective and time-bound measures, pursuant to *Article 7(2)*. Although the Convention requires immediate action, it was recognized that some issues related to the worst forms of child labour would take time to address, and that relevant measures would take time to implement.<sup>1025</sup> Measures that require a certain period of time to become effective include, in particular, measures related to the prevention of the worst forms of child labour (pursuant to *Article 7(2)(a)* of the Convention), as well as measures for the rehabilitation and social reintegration of children removed from these worst forms of child labour (pursuant to *Article 7(2)(b)* of the Convention). Time-bound measures should also be taken to ensure access to free basic education for children removed from the worst forms of child labour, to identify and reach out to children at special risk and to take account of the special situation of girls, pursuant to *Article 7(2)(c), (d) and (e)*.

440. Lastly, the Committee is of the view that it is important to highlight a complementary method of application of the Convention: international cooperation efforts. The Convention is unique in that it explicitly states that ratifying countries shall take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation and/or assistance.<sup>1026</sup> While this does not constitute an obligation to engage in a particular level or form of cooperation or

<sup>1020</sup> See, for example, *Brazil* – CEACR, direct request, 2010 (Anti-Drugs Act No. 6.368); *Suriname* – CEACR, direct request, 2010; and *Sweden* – CEACR, direct request, 2010 (Narcotic Drugs (Punishments) Act).

<sup>1021</sup> See, for example, *Czech Republic* – CEACR, direct request, 2011 (Conscription Act No. 585/2004); *Suriname* – CEACR, direct request, 2010 (Legal Status of Military Personnel Act); and *Togo* – CEACR, direct request, 2011 (Act No. 2007-010 issuing the general conditions of service of the military forces).

<sup>1022</sup> See, for example, *Costa Rica* – CEACR, observation, 2011 (Code of Childhood and Adolescence); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (Act No. 09/001 of 2009 for the protection of children); and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011 (Law on the Protection of Children).

<sup>1023</sup> See, for example, *Antigua and Barbuda* – CEACR, direct request, 2011 (Childcare and Protection Act).

<sup>1024</sup> See, for example, *Gabon* – CEACR, direct request, 2011 (Labour Code, as amended in 2010); and *Lao People's Democratic Republic* – CEACR, direct request, 2010 (amended Labour Law No. 06/NA, 2006).

<sup>1025</sup> *Child labour*, 1999, op. cit., p. 98.

<sup>1026</sup> *Art. 8* of the Convention.

assistance, international cooperation can be an important method for the application of the Convention.<sup>1027</sup>

### Difficulties concerning the scope of application

441. Difficulties regarding the scope of application of the Convention generally relate to cases where a prohibition of a worst form of child labour exists, but does not cover the whole of the activity specified in the Convention, or does not cover all children as defined in *Article 2* of the Convention. Firstly, in a number of countries the prohibition contained in the legislation implementing the Convention does not sufficiently cover the scope of activities defined as the worst forms of child labour in *Article 3* of the Convention. This may include legislation that only covers trafficking for the purpose of sexual exploitation (and not labour exploitation), or only covers cross-border trafficking (and not internal trafficking).<sup>1028</sup> Moreover, the Committee has observed cases where the existing prohibition relates to a worst form of child labour, but does not specifically address the crux of the prohibited activity. Examples of this include legislation which prohibits the possession or dissemination of child pornography, but not the *use* of a child to produce it, or legislation which prohibits providing drugs to minors, but does not prohibit the *use* of a child for the production or trafficking of such drugs.<sup>1029</sup> Secondly, difficulties concerning the scope of application include cases where the relevant prohibition does not cover both boys and girls, most often with regard to trafficking and commercial sexual exploitation.<sup>1030</sup> In such cases, the Committee strongly emphasizes that the Convention applies equally to boys and girls, and urges the governments concerned to take immediate measures to ensure that the relevant legislation provides protection for both sexes. Finally, prohibitions applying the Convention may be limited in terms of age, in that the legislation prohibiting the worst forms of child labour only addresses children up to 14 or 16 years of age. In these cases, the Committee underlines the importance of prohibiting the worst forms of child labour for all persons under 18 years, and calls on governments to take immediate measures in this regard.

## Thematic issues

### Sale and trafficking of children

#### *Definition of sale and trafficking*

442. *Article 3(a)* of Convention No. 182 provides that the term “worst forms of child labour” comprises, among others, all forms of slavery or practices similar to slavery, such as the sale and trafficking of children.

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<sup>1027</sup> *Record of Proceedings*, ILC, 87th Session, Geneva, 1999, Report of the Committee on Child Labour, para. 243, p. 19/49.

<sup>1028</sup> See paras 442–464 below.

<sup>1029</sup> See paras 504–537 below.

<sup>1030</sup> See paras 442–464 and 504–526 below.

443. While Convention No. 182 does not provide any definition of the sale<sup>1031</sup> and trafficking<sup>1032</sup> of children, its scope is limited to circumstances in which children are trafficked for purposes of sexual or labour exploitation and is not meant to cover issues unrelated to the worst forms of child labour, such as trafficking for the purpose of adoption or organ transplants.<sup>1033</sup>

### *Legislative measures*

444. In 2005, the Committee expressed deep concern about the size of the trafficking problem and recognized that, while the elimination of poverty is a necessary precondition to eradicate trafficking, it is not sufficient.<sup>1034</sup> However, the Committee also observed that many countries have adopted legislation to prohibit the worst forms of child labour and punish the perpetrators, including the trafficking of children under 18 years of age, after the adoption of the Convention,<sup>1035</sup> which reflects a real commitment to combat a problem that appears to be steadily on the increase in some parts of the world.<sup>1036</sup>

### Comprehensive legislation to prohibit the sale and trafficking of children

445. The legislation prohibiting trafficking is penal in nature, and can be included in a country's penal or labour codes, or provided for in a law dealing specifically with trafficking, exploitation or children's rights. In *Mauritius*, for example, the Committee noted with satisfaction that the Child Protection Act was amended in 2005 in order to include provisions prohibiting all cases of child trafficking: section 13A(1) states that any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation commits an offence; and section 13A(7) specifies that "exploitation" includes the exploitation of prostitution of children or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery.<sup>1037</sup> The Committee also noted with satisfaction in *Nicaragua* that the promulgation of Act No. 641 of 2007 issuing the new Penal Code prohibits the

<sup>1031</sup> Article 2(a) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) defines the sale of children as meaning any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

<sup>1032</sup> Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) (Palermo Protocol) defines "trafficking in persons" as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

<sup>1033</sup> *Child labour*, 1999, op. cit., p. 60. See also *Child labour*, 1998, op. cit., p. 52.

<sup>1034</sup> CEACR, general observation, 2005, Convention No. 182.

<sup>1035</sup> The most recent examples of countries that have adopted appropriate anti-trafficking legislation include: *Australia* – CEACR, direct request, 2010; *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Central African Republic* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; *Jamaica* – CEACR, observation, 2011; *Jordan* – CEACR, observation, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Madagascar* – CEACR, direct request, 2010; *Montenegro* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Switzerland* – CEACR, direct request, 2010; *Tajikistan* – CEACR, direct request, 2011; and *Tunisia* – CEACR, direct request, 2010.

<sup>1036</sup> G. Nesi, L. Nagler and M. Pertile (eds): *Child labour in a globalized world: A legal analysis of ILO action* (Hampshire, Ashgate Publishing Ltd, 2008), p. 92.

<sup>1037</sup> *Mauritius* – CEACR, observation, 2008.

trafficking of persons for the purposes of slavery or sexual exploitation<sup>1038</sup> and that, in *Thailand*, that the Anti-Trafficking in Persons Act prohibits the trafficking of children, defined as the procuring, buying, selling, vending, bringing from or sending to, detaining, confining, or harbouring of a child under 18 years for the purpose of labour or sexual exploitation.<sup>1039</sup>

### *Prohibiting child trafficking at 18 years of age*

446. Many countries have duly enacted a prohibition of the sale and trafficking of persons below 18 years of age. For example, having previously observed that the anti-trafficking provisions in *Sri Lanka* only applied to children below 16 years of age, the Committee noted with satisfaction that by virtue of the Penal Code (Amendment) Act, No. 16 of 2006, new section 360C(1)(c) prohibits the trafficking of a “child” for the purpose of securing forced or compulsory labour or services, slavery, servitude, or prostitution or other forms of sexual exploitation, and that section 360C(3) states that “child” means a person under 18 years of age.<sup>1040</sup> Similarly, noting in both *Finland* and *Ireland* that their legislation prohibiting child trafficking only covered children under 15 and 17 years of age, respectively, the Committee subsequently noted with interest that both countries had amended their relevant laws to criminalize the trafficking of children under 18 years of age.<sup>1041</sup>

447. The legislation in some countries, however, is not in conformity with the Convention. Indeed, the Committee has noted cases in which the legislation does not prohibit the trafficking of children under 18 years of age, or defines children as being younger than the required 18 years in their anti-trafficking legislation.<sup>1042</sup> Where countries do not have anti-trafficking legislation that prohibits the trafficking of persons below 18, the Committee emphasizes that the governments concerned need to rectify their legislative gaps as a matter of urgency.

### *Prohibiting child trafficking for both sexual and labour exploitation*

448. Children are trafficked globally for commercial sexual and labour exploitation, and a good number of countries have prohibited the sale and trafficking of children for both of these purposes. In *Paraguay*, for example, while the Penal Code originally prohibited the international trafficking of persons only for prostitution, the Committee noted with satisfaction that new sections 129b and 129c of the Penal Code, as inserted by Act No. 3440/08, also punish trafficking for the purposes of slavery and forced labour through means of force, threats, deception or trickery.<sup>1043</sup>

<sup>1038</sup> *Nicaragua* – CEACR, observation, 2010.

<sup>1039</sup> *Thailand* – CEACR, observation, 2011.

<sup>1040</sup> *Sri Lanka* – CEACR, observation, 2007.

<sup>1041</sup> *Finland* – CEACR, direct request, 2009; and *Ireland* – CEACR, direct request, 2007.

<sup>1042</sup> For example, while the Offences against the Person Act of 1994 of *Barbados* – CEACR, direct request, 2010, makes it an offence for any person to traffic a child below 16 years, there appear to be no legal provisions in *Barbados* that specifically prohibit trafficking in children under the age of 18 years. See also *Bangladesh* – CEACR, observation, 2011; *Lesotho* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; and *Trinidad and Tobago* – CEACR, direct request, 2011.

<sup>1043</sup> *Paraguay* – CEACR, observation, 2011.

449. However, the Committee has also noted cases in which the prohibition of trafficking is incomplete, applying only when trafficking is conducted for the purpose of sexual exploitation<sup>1044</sup> or, in rare cases, only for the purpose of labour exploitation.<sup>1045</sup> ***The Committee emphasizes that, under Article 3(a) of the Convention, the sale and trafficking of children under 18 must be prohibited for both sexual and labour exploitation.***<sup>1046</sup>

*Prohibiting the trafficking of both girls and boys under 18 years, taking into account the special situation of girls*

450. As the Convention clearly applies to all children under 18 years of age, the prohibition of child trafficking must extend to both boys and girls. Hence, in *Guyana*, while the Criminal Law Offences Act of 1893 only covered the trafficking of females (girls) for the purpose of sexual exploitation, the Committee noted that the Combating of Trafficking in Persons Act, enacted in 2005, provides comprehensive measures to combat trafficking of both boys and girls.<sup>1047</sup> Similarly, the Committee had noted that the Criminal Code in the *Republic of Korea* only covered the trafficking of women for the purpose of sexual exploitation.<sup>1048</sup> The Committee later noted that section 29 of the Child Welfare Act prohibits the act of trading children (defined as those under 18 years), and that section 18 of the Act on the punishment of acts of arranging sexual traffic prohibits human trafficking aimed for sexual purposes regardless of the gender or age of the victim.

451. In some instances, however, the Committee has observed that the legislation covers the trafficking of women and girls, but not boys.<sup>1049</sup> ***Consequently, the Committee recalls that Article 3(a) requires the adoption of provisions prohibiting the sale and trafficking of both boys and girls under 18 years of age and emphasizes that immediate measures must be taken to ensure that the relevant legislation provides protection for both sexes.***

452. However, it is important to note that, while the prohibition of child trafficking must extend to boys and girls, this problem often affects a greater number of girls in practice. This can be especially true in instances of child trafficking for sexual exploitation or domestic work. In such cases, the Committee emphasizes that member States must take measures, taking into account the special situation of girls, in accordance with *Article 7(2)(e)* of the Convention, and protect girls from the worst forms of child labour, including the trafficking of girls for labour or sexual exploitation.<sup>1050</sup>

<sup>1044</sup> See, for example, *Algeria* – CEACR, direct request, 2009; *Angola* – CEACR, observation, 2011; *Bahamas* – CEACR, direct request, 2010; *Dominica* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2011; *Saint Lucia* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1045</sup> *Libya* – CEACR, direct request, 2011.

<sup>1046</sup> *United Republic of Tanzania* – CEACR, observation, 2010. Moreover, the Committee has noted with interest that the laws prohibiting child trafficking encompass both sexual and labour exploitation in *Cyprus* – CEACR, direct request, 2009; *Mongolia* – CEACR, direct request, 2010; and *Suriname* – CEACR, direct request, 2010.

<sup>1047</sup> *Guyana* – CEACR, direct request, 2007.

<sup>1048</sup> *Republic of Korea* – CEACR, direct request, 2007.

<sup>1049</sup> See, for example, *Dominica* – CEACR, direct request, 2010; *Dominican Republic* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; and *Papua New Guinea* – CEACR, observation, 2011.

<sup>1050</sup> See, for example, *Burkina Faso* – CEACR, observation, 2009; *Georgia* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2010; *Lesotho* – CEACR, observation, 2011; *Lithuania* – CEACR, direct request, 2008; and *Trinidad and Tobago* – CEACR, direct request, 2011.

### *Prohibiting both cross-border and internal child trafficking*

453. Member States may be countries of origin, of transit and/or of destination for the sale and trafficking of children.<sup>1051</sup> Accordingly, in many member States, the prohibition on trafficking of children duly applies to both cross-border and internal trafficking. Hence, in *Brazil*, the Committee noted with satisfaction the adoption of Act No. 11.106 of 2005 amending Title VI, Chapter V, of the Penal Code relating to the procuring and trafficking of persons, which henceforth prohibits the international as well as the internal trafficking of persons.<sup>1052</sup>

454. However, in some countries, the prohibition of the trafficking of children only applies to cross-border trafficking. The Committee is of the view that this is particularly problematic when there is a significant level of internal or domestic trafficking within the country.<sup>1053</sup> ***It therefore requests the governments concerned to take the necessary measures to prohibit the sale and trafficking of all children under 18 years of age for labour and sexual exploitation within their territories, as well as to or from their country.***

### *Issues of the application of the legislation relating to the sale and trafficking of children*

455. While trafficking for sexual exploitation most frequently relates to prostitution, trafficking for labour exploitation can imply many practices, such as domestic servitude,<sup>1054</sup> debt bondage,<sup>1055</sup> forced street vending,<sup>1056</sup> forced begging by religious instructors, that is the use of child *talibés*,<sup>1057</sup> the use of children for camel jockeying,<sup>1058</sup> and agricultural work.<sup>1059</sup> The Committee has observed a number of cases in which, regardless of the comprehensiveness of their legislation, countries suffer serious child trafficking problems in practice. This situation can arise from a number of factors.

### *Lack of effective enforcement of the anti-trafficking legislation*

456. The problem of child trafficking can often stem from a lack of effective enforcement of the legislation, either due to a lack of resources or the low rate of prosecutions and convictions.<sup>1060</sup> In these cases, the Committee has expressed its

<sup>1051</sup> See, for example, *China* – CEACR, observation, 2011; *Djibouti* – CEACR, direct request, 2009; *Dominican Republic* – CEACR, observation, 2011; *Ethiopia* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2010; and *Pakistan* – CEACR, observation, 2011.

<sup>1052</sup> *Brazil* – CEACR, observation, 2008.

<sup>1053</sup> See, for example, *Angola* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1054</sup> See, for example, *Central African Republic* – CEACR, direct request, 2010; and *Congo* – CEACR, observation, 2010.

<sup>1055</sup> See, for example, *Kuwait* – CEACR, direct request, 2010; and *Pakistan* – CEACR, observation, 2011.

<sup>1056</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; and *Liberia* – CEACR, direct request, 2011.

<sup>1057</sup> See, for example, *Mauritania* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; and *Senegal* – CEACR, observation, 2011.

<sup>1058</sup> See, for example, *Pakistan* – CEACR, observation, 2011; *Saudi Arabia* – CEACR, observation, 2010; *Sudan* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, observation, 2010.

<sup>1059</sup> See, for example, *Côte d'Ivoire* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, observation, 2011; and *Mali* – CEACR, observation, 2010.

<sup>1060</sup> The issue of enforcement of the Convention is one that is usually covered by Art. 7(1), pertaining to penalties. However, in the following countries, the Committee has analysed both the legislation of member States

concern and requested the governments to take measures to ensure the effective application of their legislation and to supply information on the application of the relevant provisions which prohibit child trafficking, including, in particular, statistics on the number and nature of the violations reported, investigations, prosecutions, convictions and penalties imposed.<sup>1061</sup> For instance, the Committee noted with concern the high and rising number of children who are the victims of sexual exploitation and trafficking and at the unequal enforcement of the law in *Colombia*, but then observed that the Government had increased law enforcement efforts against trafficking offenders. Consequently, in 2008, the Colombian authorities initiated 159 anti-trafficking investigations, 20 prosecutions and achieved 16 convictions, sentencing trafficking offenders to periods of imprisonment ranging from four-and-a-half years to 14 years.<sup>1062</sup>

#### Complicity of government officials

**457. *Another issue of concern that has been observed by the Committee are the cases in which there have been reports of complicity of government officials in the trafficking of children.***<sup>1063</sup> *The Committee expresses its deep concern over such practices, and therefore urges the governments concerned to intensify their efforts and strengthen the capacity of law enforcement agencies to ensure that perpetrators of human trafficking, and complicit government officials, are prosecuted and that sufficiently effective and dissuasive penalties are imposed.*

#### Programmatic measures

458. As with any other worst form of child labour, member States are required, under *Article 7(2)* of the Convention, to adopt effective and time-bound measures in order to eradicate the sale and trafficking of children for labour and sexual exploitation, as a matter of urgency. In the case of sale and trafficking, this is especially important since many countries have adopted the appropriate legislative framework, but the problem of trafficking remains difficult to combat in practice and necessitates, among other measures, cross-border cooperation.

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on child trafficking and the enforcement of penalties in tandem: *Burkina Faso* – CEACR, observation, 2009; *Senegal* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>1061</sup> See, for example, *Albania* – CEACR, observation, 2011; *Belize* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Dominican Republic* – CEACR, observation, 2011; *Peru* – CEACR, direct request, 2010; *Philippines* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; and *Ukraine* – CEACR, observation, 2010.

<sup>1062</sup> *Colombia* – CEACR, direct request, 2011. Other similar positive results have been observed in *Azerbaijan* – CEACR, direct request, 2011; and *Costa Rica* – CEACR, direct request, 2011.

<sup>1063</sup> For example, in *Mexico* – CEACR, observation, 2011, no convictions or sentences against corrupt officials were handed down in 2008, although some immigration officials, officials from the Mexican Attorney General's Office, and military officials were arrested for their alleged participation in trafficking crimes, and no convictions or sentences of trafficking offenders were reported by the federal, state or local authorities in 2008. See also *Kyrgyzstan* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; *Togo* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2011. In *Argentina* – CEACR, observation, 2011, after having observed reports of corruption in the police forces and the direct involvement of police officers in criminal activities related to the trafficking of persons, the Committee noted with interest that, since the entry into force of Act No. 26.364 of 2008 on the prevention of, and conviction for, the trafficking of persons and on assistance to victims, up to 31 July 2010, a total of 590 raids were carried out, 583 persons were arrested and 921 victims were assisted, including 204 children under 18 years of age.

### The ILO response to the trafficking of children for use as camel jockeys in Qatar

Only a holistic approach to combating the trafficking of children may give the desired result of eradicating the problem. One illustration of this is the case of *Qatar*, where the Government's legislative, practical and rehabilitation measures have led to the eradication of the trafficking of children to the country for their use as camel jockeys.<sup>1</sup> The Committee noted that, prior to the adoption of Law No. 22 of May 2005 on the import, employment, training and participation of children in camel racing, there were between 200 and 300 children from 6 to 13 years of age (all from *Sudan*) used in camel racing and exposed to serious injuries. It has noted with satisfaction that since the promulgation of Law No. 22 of 2005, and the adoption of a number of practical measures, there has been no recourse by camel owners to using children as camel jockeys. In particular, the Government started to manufacture robots to replace camel jockeys, which have become so popular that even camel owners in other Gulf Cooperation Council countries, such as the *United Arab Emirates*, *Kuwait* and *Oman*, are buying them. The Government also adopted a number of rehabilitation measures aimed at assisting former child camel jockeys and providing them with medical treatment for poor health or injuries sustained before returning them to their country, i.e. *Sudan*. The Committee considers the developments in *Qatar* concerning the use of robot camel jockeys to be a case of good practice.

<sup>1</sup> *Qatar* – CEACR, observation, 2007. Similarly, in the *United Arab Emirates* – CEACR, observation, 2010, the Committee noted with satisfaction that section 1 of Federal Act No. 51 of 2006 defines and prohibits the trafficking of persons and that an executive-level office implemented several measures to address the issue of the use of children for camel jockeying. A 2007 agreement with UNICEF established a programme to rehabilitate and repatriate child camel jockeys to their country of origin (UAE–UNICEF programme), in cooperation with the Governments of *Bangladesh*, *Mauritania*, *Pakistan* and *Sudan*, in order to withdraw children trafficked to the United Arab Emirates for use in camel jockeying and to rehabilitate them, repatriate them to their countries and reintegrate them into their communities. The Committee noted with interest that, as of 2008, 3,778 children had been withdrawn from work as camel jockeys (879 from Bangladesh, 465 from Mauritania, 1,303 from Pakistan and 1,131 from Sudan) and that the Government has provided approximately US\$8,414,900 in monetary compensation to the child victims of this type of work.

### Programmes and national plans of action against trafficking

459. A significant number of member States have adopted effective and time-bound measures of their own, including through the implementation of programmes or national plans of action.<sup>1064</sup> In *Denmark*, for example, an Action Plan to Fight Trafficking in Human Beings was adopted for 2007–10 which focuses on four areas for action: strengthening investigation efforts in order to identify and bring traffickers to justice; supporting the victims of trafficking by improving social services; preventing human trafficking by limiting demand; and increasing the population's knowledge of these matters and preventing human trafficking by improving international cooperation.<sup>1065</sup> In *Viet Nam*, the National Plan of Action to Combat the Crime of Trafficking in Children and Women aimed to organize mass awareness programmes and other actions at different levels in order to prevent and reduce the incidence of trafficking of women and children by 2010.<sup>1066</sup>

<sup>1064</sup> See, for example, *Albania* – CEACR, observation, 2011; *Argentina* – CEACR, observation, 2011; *China* – CEACR, observation, 2011; *Czech Republic* – CEACR, direct request, 2011; *Finland* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2010; *Malaysia* – CEACR, observation, 2011; *Montenegro* – CEACR, direct request, 2010; *Peru* – CEACR, direct request, 2010; *Poland* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>1065</sup> *Denmark* – CEACR, direct request, 2011.

<sup>1066</sup> *Viet Nam* – CEACR, direct request, 2010.



460. Further measures also include access to free basic education;<sup>1067</sup> as well as the organization of meetings between the relevant authorities responsible for combating the trafficking of human beings to evaluate criminal strategies in the field;<sup>1068</sup> training programmes and workshops for victim support officials, child protection officials, youth workers, teachers, students, prosecutors and judges, and various law enforcement agencies;<sup>1069</sup> awareness-raising;<sup>1070</sup> state assistance funds;<sup>1071</sup> consular assistance;<sup>1072</sup> telephone hotlines;<sup>1073</sup> reinforcement of border and visa regulations and control;<sup>1074</sup> and cooperation and information sharing with organizations or groups in charge of human rights, such as UNICEF, UNDP and other United Nations agencies, the International Organization for Migration (IOM) and NGOs.<sup>1075</sup>

461. A good number of countries have also established shelters or crisis centres for child victims of trafficking.<sup>1076</sup> These centres usually provide social services aimed at satisfying the daily needs and preparing the social integration of child victims of violence and trafficking. Such services can include legal, medical and psychological help, counselling, material and financial support for personal needs, assistance with repatriation, services to replace personal identification documents, vocational or educational training, and a safe place of residence.

## ILO–IPEC collaboration

### *ILO–IPEC Time-bound Programmes*

462. In many instances, effective and time-bound measures have been implemented with ILO–IPEC collaboration,<sup>1077</sup> including the implementation of comprehensive **TBPs**.<sup>1078</sup> For example, in *Cambodia*, the ILO–IPEC project “Prevention of trafficking in children

<sup>1067</sup> Access to free basic education, being one of the most effective means of preventing the engagement of children in the worst forms of child labour, is required by the Convention. This principle is discussed in paras 563–588 below. However, in some countries, Governments have specifically adopted educational measures as the principle means of preventing the trafficking of children, such as in *Slovenia* – CEACR, direct request, 2010.

<sup>1068</sup> See, for example, *Belgium* – CEACR, direct request, 2007.

<sup>1069</sup> See, for example, *Estonia* – CEACR, direct request, 2011; and *Ghana* – CEACR, direct request, 2011.

<sup>1070</sup> See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Slovenia* – CEACR, direct request, 2010.

<sup>1071</sup> See, for example, *Georgia* – CEACR, direct request, 2011; and *Thailand* – CEACR, observation, 2011.

<sup>1072</sup> See, for example, *Hungary* – CEACR, direct request, 2010.

<sup>1073</sup> See, for example, *Slovakia* – CEACR, direct request, 2011; and *Poland* – CEACR, direct request, 2010.

<sup>1074</sup> See, for example, *Australia* – CEACR, direct request, 2011; and *Canada* – CEACR, direct request, 2011.

<sup>1075</sup> See, for example, *Kyrgyzstan* – CEACR, observation, 2011; *Malawi* – CEACR, direct request, 2011; *Serbia* – CEACR, direct request, 2010; and *Suriname* – CEACR, direct request, 2010.

<sup>1076</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Belarus* – CEACR, direct request, 2011; *Bulgaria* – CEACR, observation, 2011; *Gabon* – CEACR, observation, 2011; *Hungary* – CEACR, direct request, 2010; *Israel* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; *Japan* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2011; *Kyrgyzstan* – CEACR, observation, 2011; *Latvia* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Slovenia* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

<sup>1077</sup> See, for example, *Dominican Republic* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2009; *Paraguay* – CEACR, observation, 2011; *Romania* – CEACR, direct request, 2010; and *South Africa* – CEACR, direct request, 2010.

<sup>1078</sup> See, for example, *Brazil* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2011; and *Madagascar* – CEACR, direct request, 2010.

and women at a community level in Cambodia and Viet Nam” aimed to build community capacity to prevent trafficking in children and women in a total of six provinces in Cambodia through the setting up of holistic community-based preventive interventions against trafficking in children and women with the objective of reducing vulnerability to trafficking.<sup>1079</sup> The Committee noted with interest that, as a result of this project, 1,454 children were provided with non-formal education and vocational training, 18,670 children benefited from awareness-raising activities on trafficking prevention and safe migration, and 379 children were mainstreamed into the formal education system.

### *ILO–IPEC regional projects*

463. ILO–IPEC has also been successful in conducting regional programmes with the collaboration of several countries.<sup>1080</sup> For example, nine West African countries (*Benin, Burkina Faso, Cameroon, Côte d’Ivoire, Gabon, Ghana, Mali, Nigeria* and *Togo*), where the social partners were particularly concerned by the problem of the trafficking of children,<sup>1081</sup> participated in the ILO–IPEC Subregional Programme to Combat the Trafficking in Children for Labour Exploitation in West and Central Africa (LUTRENA), which commenced in 2001. In the context of the ILO–IPEC–LUTRENA programme, national legislation to combat the trafficking of children was reinforced to obtain the effective prohibition of trafficking, and awareness-raising campaigns were conducted among high-risk groups and their communities, as well as for the general public, with the objective of establishing surveillance systems. In *Burkina Faso*, for example, the Committee noted with interest that 716 children were intercepted and returned to their families with the support of the social, technical and financial partners, including vigilance committees, and these children were placed in workshops and various vocational training centres or reintegrated into the school system.<sup>1082</sup> In *Togo*, the direct action taken for children and their families between 2001 and 2007 resulted in the removal of 4,038 children from trafficking and the reintegration in the school system of 173 children removed from this worst form of child labour.<sup>1083</sup> Furthermore, four transitional shelter centres for children removed from trafficking have been established, a system to shelter and refer children removed from trafficking has been created, and 165 vigilance committees have become operational in village communities.

<sup>1079</sup> *Cambodia* – CEACR, direct request, 2009.

<sup>1080</sup> Such ILO–IPEC regional projects include: “Reducing labour exploitation of children and women: Combating trafficking in the Greater Mekong subregion” (Mekong project), involving *Cambodia, China, Lao People’s Democratic Republic, Myanmar, Thailand*, and *Viet Nam* (see, for example, *China* – CEACR, observation, 2011; *Lao People’s Democratic Republic* – CEACR, direct request, 2010; *Thailand* – CEACR, observation, 2011; and *Viet Nam* – CEACR, direct request, 2006), as well as the subregional project “Contribution to the prevention and elimination of the commercial sexual exploitation of children in Central America, Panama, and the Dominican Republic” (see, for example, *Dominican Republic* – CEACR, observation, 2011; *Guatemala* – CEACR, observation, 2009; and *Panama* – CEACR, direct request, 2011).

<sup>1081</sup> CEACR, general observation, 2005, Convention No. 182.

<sup>1082</sup> *Burkina Faso* – CEACR, observation, 2009.

<sup>1083</sup> *Togo* – CEACR, observation, 2011. See also *Benin* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Côte d’Ivoire* – CEACR, observation, 2011; *Gabon* – CEACR, observation, 2009; *Ghana* – CEACR, direct request, 2009; and *Mali* – CEACR, observation, 2010.

## Prevalence of child trafficking in practice

464. On the other hand, a number of countries have not developed effective and time-bound measures for the protection of children from trafficking,<sup>1084</sup> or have adopted a number of measures and initiatives that have proven to be inadequate, insufficient or not properly implemented, especially in light of the gravity of the trafficking problem.<sup>1085</sup> For example, one issue of concern relates to cases where child victims of sale and trafficking for sexual or labour exploitation are found to be undocumented or illegal residents and are deported within a short period of their arrest.<sup>1086</sup> ***The Committee must express its concern over such situations and emphasizes that the governments concerned should take immediate and effective measures for the prevention of child trafficking and/or the removal and rehabilitation of former child victims of trafficking through such measures as repatriation, family reunification and appropriate support, in cooperation with the child's country of origin.***

## Forced labour

### *Children in bonded labour*<sup>1087</sup>

465. Article 3(a) of the Convention, in its enumeration of forms of slavery or practices similar to slavery, specifically identifies debt bondage as a worst form of child labour. This consists of several situations, including where children are sold into bondage by their parents,<sup>1088</sup> where a parent is subject to debt bondage and children have no alternative but to work with their parents,<sup>1089</sup> or where children are used to settle financial disputes and sent by their family to work off a debt.<sup>1090</sup>

## Legislation prohibiting child bonded labour

466. Several member States have constitutional or legislative prohibitions against the forced labour of children, and this prohibition may encompass bonded labour. In addition, some States have specifically addressed the issue of bonded labour in their legislation. For example, the Act on Special Protection against Child Abuse, Exploitation and Discrimination in the *Philippines* prohibits debt bondage and serfdom of children under 18 years.<sup>1091</sup> The Criminal Code in *Australia* also explicitly prohibits debt bondage and it is an aggravated offence when the victim is under 18 years of age.<sup>1092</sup>

<sup>1084</sup> See, for example, *Grenada* – CEACR, direct request, 2011; *Haiti* – CEACR, observation, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; *Oman* – CEACR, direct request, 2010; and *Swaziland* – CEACR, direct request, 2010.

<sup>1085</sup> See, for example, *Algeria* – CEACR, direct request, 2009; *Antigua and Barbuda* – CEACR, direct request, 2011; *Bahrain* – CEACR, direct request, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Ethiopia* – CEACR, direct request, 2010; *Greece* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2010; *Tajikistan* – CEACR, direct request, 2011; *Trinidad and Tobago* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

<sup>1086</sup> See, for example, *Oman* – CEACR, direct request, 2010; *Saudi Arabia* – CEACR, observation, 2010; and *Trinidad and Tobago* – CEACR, direct request, 2011.

<sup>1087</sup> For a definition and full discussion of debt bondage, including adult bonded labour, see General Survey, 2007, op. cit., para. 71.

<sup>1088</sup> See, for example, *Philippines* – CEACR, observation, 2006.

<sup>1089</sup> See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2009.

<sup>1090</sup> See, for example, *Mozambique* – CEACR, observation, 2010.

<sup>1091</sup> *Philippines* – CEACR, direct request, 2005.

<sup>1092</sup> Sections 271.8 and 271.9 of the Criminal Code of 1995. *Australia* – CEACR, direct request, 2010.

Some countries have adopted specific legislation focusing on the abolition of bonded labour. For example, the Government of India indicates in its report submitted under article 19 of the ILO Constitution that it adopted the Bonded Labour System (Abolition) Act in 1976, and the Global Report of 2010 indicates that it was the first country in South Asia to enact legislation against bonded labour.<sup>1093</sup> **However, in some countries, the specific prohibition of bonded labour does not cover all persons under 18 years.**<sup>1094</sup> **In such cases, the Committee calls on the governments concerned to ensure that amendments are adopted to the relevant legislation prohibiting debt bondage for all children under 18, as a matter of urgency.**

#### Issues relating to the application of the prohibition of child bonded labour

467. The problem of child bonded labour is often one of practice, where the illegal use of child bonded labour persists despite legislation prohibiting this practice. Addressing this phenomenon therefore requires the effective enforcement of legislation and initiatives in this regard include the District Vigilance Committees in *Pakistan*, which were constituted to monitor the implementation of the Bonded Labour System (Abolition) Act of 1992, and the Vulnerable Groups Unit in *Lao People's Democratic Republic*, which was designed to intervene on issues of vulnerable children, including child bonded labour.<sup>1095</sup> However, in several countries, mechanisms to monitor and combat child bonded labour have not been effective.<sup>1096</sup> In such cases, the Committee emphasizes that the governments concerned should intensify their efforts to strengthen the capacity of the relevant law enforcement officials to ensure the effective implementation of the legislation prohibiting this worst form of child labour.

#### Complementary programmatic initiatives to address child bonded labour

468. The Committee is of the view that the effective enforcement of relevant legislative provisions should be supplemented by programmatic measures for the prevention of child bonded labour, as well as for the rehabilitation and social reintegration of children removed from this worst form of child labour. In *Nepal*, after the *kamaiya* system<sup>1097</sup> was abolished by formal declaration of Parliament in 2000, the Government launched a project, in conjunction with ILO–IPEC, entitled “Sustainable elimination of bonded labour”, which targeted the rehabilitation of freed *kamaiyas*. The Committee noted with interest that within the framework of the project, 5,554 children were prevented from bonded labour and provided with educational support and 1,232 children were withdrawn from bonded labour and provided with informal education, together with

<sup>1093</sup> *Accelerating action against child labour*, op. cit., para. 85.

<sup>1094</sup> For example, in *Bangladesh*, the Labour Act of 2006 prohibits debt bondage, but only in respect of children under 14 years. See *Bangladesh* – CEACR, direct request, 2011. However, the Committee has noted the Government's indication that it is working on proposals to bring section 35 of the Labour Code of 2006 into conformity with Art. 3(a) of the Convention.

<sup>1095</sup> *Pakistan* – CEACR, observation, 2011; and *Lao People's Democratic Republic* – CEACR, direct request, 2010.

<sup>1096</sup> For example, in *Pakistan*, despite the establishment of the District Vigilance Committees, bonded labour continues, affecting the poorest and most vulnerable children. The Committee has also noted reports of serious corruption in District Vigilance Committees, and that the police lack the personnel, training and equipment necessary to confront landlords' armed guards when freeing bonded labourers. See *Pakistan* – CEACR, observation, 2011.

<sup>1097</sup> A traditional system of bonded labour found in southern *Nepal*.

income-generating support to these families.<sup>1098</sup> The Committee is of the view that this rehabilitation should also include educational initiatives, consistent with *Article 7(2)(c)* of the Convention. A positive example is the *Plurinational State of Bolivia*, where the Committee has noted with interest that ten education centres were set up in six camps in the municipality of Bermejo.<sup>1099</sup>

### *Forced child labour in domestic work*

469. Another form of forced labour that particularly affects children is forced labour in the context of domestic work.<sup>1100</sup> Many children around the world are engaged in domestic work,<sup>1101</sup> and some working in this sector are exploited under conditions that qualify as forced labour. This includes children who are obliged to work long hours without pay and who experience restricted freedom of movement,<sup>1102</sup> children who are trafficked for the purpose of domestic labour,<sup>1103</sup> and children who are sold into domestic service by their parents,<sup>1104</sup> in addition to various traditional systems of domestic servitude.<sup>1105</sup>

### Protecting children from forced domestic labour through legislative measures

470. Legislation can play a significant role in protecting children from forced domestic work. In some countries, the prohibition of forced labour explicitly specifies that this prohibition applies to domestic workers. For example, section 15 of the Labour Code of 1997 in *Cambodia* states that forced or compulsory labour is forbidden, including for domestic workers or household servants.<sup>1106</sup> Forced child domestic labour may be addressed through the effective regulation of domestic work, including recruitment practices and working conditions. For example, the Committee noted with satisfaction the adoption of Act No. 666 of 2008 on domestic work in *Nicaragua*, which amends the Labour Code to provide young persons working in domestic service with more protection by specifying recruitment and working conditions, as well as the penalties

<sup>1098</sup> *Nepal* – CEACR, direct request, 2010.

<sup>1099</sup> *Plurinational State of Bolivia* – CEACR, observation, 2009.

<sup>1100</sup> The Committee has also emphasized the potentially hazardous nature of child domestic work, see paras 540–558 below.

<sup>1101</sup> An estimated 15.5 million children were engaged in domestic work worldwide in 2008, according to IPEC–SIMPOC. See *Domestic work: Policy brief: Global and regional estimates on domestic workers* (Geneva, ILO, 2011), p. 9.

<sup>1102</sup> See, for example, *Haiti* – CEACR, observation, 2011.

<sup>1103</sup> See, for example, *Central African Republic* – CEACR, direct request, 2010; *Chad* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2011; *Lesotho* – CEACR, observation, 2011; and *Mali* – CEACR, observation, 2010.

<sup>1104</sup> For example, the Committee has noted the indications of the International Trade Union Confederation (ITUC) that in *Morocco* child domestic labour is performed under conditions of servitude with parents selling their children to work as domestic servants. See *Morocco* – CEACR, observation, 2011.

<sup>1105</sup> Such as the practice of “adopting” a child for the purpose of domestic service in *Papua New Guinea* (see *Papua New Guinea* – CEACR, direct request, 2011) and the *criadazgo* system in *Paraguay* (see *Paraguay* – CEACR, observation, 2011).

<sup>1106</sup> *Cambodia* – CEACR, direct request, 2009.

applicable in the case of abuses.<sup>1107</sup> Moreover, the Committee has noted that some States have opted to prohibit all child domestic work.<sup>1108</sup>

**471. *Despite some positive developments in this regard, significant legislative gaps remain in several countries allowing the continued exploitation of child domestic workers.***<sup>1109</sup> *In such cases, the Committee reminds the governments concerned that the forced labour of child domestic workers constitutes one of the worst forms of child labour. It expresses its serious concern at the continued economic and sexual exploitation experienced by child domestic workers, and considers that national legislation to prohibit this practice should be adopted as a matter of urgency.*

Issues related to the application of the prohibition on forced child domestic work

*Forced domestic labour continues despite legislative prohibitions*

472. The Committee has observed cases in which legislation, although in conformity with the Convention, has not been sufficient to address the practice of engaging children in forced domestic work.<sup>1110</sup> In such cases, the Committee calls on the governments concerned to take immediate and effective measures to ensure that children in forced domestic labour benefit from the protection afforded by the national legislation, and that the persons responsible for this worst form of child labour are prosecuted and that effective and sufficiently dissuasive penalties are imposed in practice.

*Taking account of the special situation of girl domestic workers*

473. Around the world, child domestic work is largely carried out by girls, who are easily isolated and have little protection or social support.<sup>1111</sup> Due to this isolation, the Committee has observed that reaching out to girls engaged in domestic work can be extremely difficult, and that these girls are particularly vulnerable to physical and sexual assault.<sup>1112</sup> The Committee expresses its deep concern regarding the situation of these girls. In addressing child domestic work performed under conditions similar to slavery,

<sup>1107</sup> Nicaragua – CEACR, observation, 2010.

<sup>1108</sup> See, for example, Benin – CEACR, direct request, 2011; Brazil – CEACR, observation, 2010; and Colombia – CEACR, direct request, 2011.

<sup>1109</sup> In the Philippines, domestic work is prohibited only for children under 15 years of age, although young persons between 15 and 18 years of age continue to be employed in domestic work in conditions similar to forced labour. See Philippines – CEACR, observation, 2010. Concerning Bangladesh, while the Government is preparing a guideline on domestic work, child domestic labour is not prohibited in law, although a large number of children are engaged in domestic work, working for long hours without pay. See Bangladesh – CEACR, observation, 2011.

<sup>1110</sup> For example, in Paraguay, although the *criadazgo* system (where children live and work in the houses of others in exchange for accommodation, food and basic education, sometimes in situations analogous to bondage) was prohibited pursuant to Decree No. 4951 of 22 March 2005, the practice persists in the country. See Paraguay – CEACR, observation, 2011. Moreover, in Togo, while national legislation prohibits forced labour and domestic work is considered hazardous for persons under 18 years of age, child domestic work continues to be performed under conditions similar to forced labour in the country. See Togo – CEACR, observation, 2011.

<sup>1111</sup> *Accelerating action against child labour*, op. cit., para. 258.

<sup>1112</sup> For example, in Morocco, the Committee noted the indication of the ITUC that some 50,000 children, mainly girls, are employed in domestic work. Of these, about 13,000 young girls under the age of 15 are employed as servants in Casablanca; 70 per cent of them are under 12 years of age and 25 per cent are under 10 years of age. A significant number of these girls, known as “*petites bonnes*” are subject to physical and sexual assault. See Morocco – CEACR, observations, 2009 and 2010.

the Committee considers it essential to take account of the special situation of girls, as this group constitutes the majority of victims of this worst form of child labour.

#### Programmatic measures to reach out to child victims of forced domestic work

474. As legislation addressing the forced domestic labour of children is not always effective, programmatic measures are essential in preventing the engagement of children in this worst form of child labour, and in removing them from it.

#### *The role of national action plans in combating forced domestic child labour*

475. Programmatic measures to address forced child domestic labour are often undertaken within the context of wider national strategies. For example, in *Uganda*, action plans were implemented within the framework of the National Programme of Action to Eliminate Child Labour aimed at both preventing (especially through education and training) and withdrawing and rehabilitating children engaged in domestic work.<sup>1113</sup> National action plans to combat child labour in *Ecuador* and *Swaziland*<sup>1114</sup> also included measures to combat exploitative domestic work of children.

#### *The role of ILO–IPEC projects*

476. The Committee wishes to highlight the role of ILO–IPEC projects in reaching out to children engaged in domestic work. For example, the Committee has noted that through phase II of the ILO–IPEC project entitled “Support to the National Action Plan and the Development of the *Time-bound Programme* for the Elimination of the Worst Forms of Child Labour” in *Indonesia*, 1,213 children were prevented from becoming engaged in child domestic work, and rehabilitation and reintegration services were provided to 127 former child domestic workers.<sup>1115</sup> Other ILO–IPEC projects implemented to reach out to child domestic labourers include the programme entitled “Preventing and eliminating exploitative child domestic work through education and training in sub-Saharan and Anglophone Africa”, in *Uganda* and *Zambia*, and ILO–IPEC initiatives carried out in *Cambodia*, *Ecuador* and *Togo*.<sup>1116</sup>

#### *Reaching out to child domestic workers through skills training and educational measures*

477. The Committee notes that children working as domestic workers in situations similar to forced labour often have little access to education,<sup>1117</sup> and that educational initiatives therefore play an important role in reaching out to these children. For example, in *Mali*, through the country’s *TBP*, over 900 domestic helpers were provided with access to literacy and over 3,000 participated in additional training.<sup>1118</sup> In *Pakistan*, ten

<sup>1113</sup> *Uganda* – CEACR, direct request, 2010.

<sup>1114</sup> *Ecuador* – CEACR, direct request, 2009; and *Swaziland* – CEACR, direct request, 2010.

<sup>1115</sup> *Indonesia* – CEACR, observation, 2011.

<sup>1116</sup> *Cambodia* – CEACR, direct request, 2009; *Ecuador* – CEACR, direct request, 2009; *Pakistan* – CEACR, direct request, 2011; *Togo* – CEACR, observation, 2011; and *Zambia* – CEACR, direct request, 2010.

<sup>1117</sup> See, for example, *Ethiopia* – CEACR, direct request, 2010; *Haiti* – CEACR, observation, 2011; and *Uganda* – CEACR, direct request, 2010.

<sup>1118</sup> *Mali* – CEACR, direct request, 2010.

educational and training centres for child domestic workers were established to facilitate mainstreaming these children into formal education.<sup>1119</sup> In *Guatemala*, a project was implemented that allowed 110 children and young persons who were working as domestic workers to be reintegrated into the school system.<sup>1120</sup> Educational measures also play a key role in preventing this worst form of child labour.

### *Issues regarding the implementation of programmatic initiatives*

478. However, not all programmatic measures aimed at protecting child domestic workers have proved effective, and the Committee has observed a lack of significant progress in several member States despite the implementation of such initiatives.<sup>1121</sup> In such cases, the Committee urges the governments concerned to intensify their efforts to ensure that all persons under 18 engaged in domestic work under conditions similar to slavery are identified, withdrawn and provided with assistance for their reintegration and rehabilitation.

### *Compulsory labour within the school system*

479. The Committee notes with concern the persistence in some countries of the phenomenon of the compulsory labour of children within the school system. This form of forced labour, specific to children, may start at a very young age, interrupts the learning process of the children affected and often involves engaging children in hazardous tasks. In this regard, the Committee has focused on two specific types of compulsory labour within the education system: the forced mobilization of schoolchildren (sometimes referred to as “work–study” programmes) and the use of children for forced begging under the pretext of education.

### *Work–study programmes*

480. The Committee has observed the practice of the forced mobilization of school children in several central Asian countries where children are removed from school and made to work during school hours. Participation in these programmes is mandatory, children may face fines for working too slowly or failing to meet production quotas, and the children’s behaviour during this work may be reflected in their school marks. While such mass mobilization often occurs during the harvest season (particularly in the cotton harvest),<sup>1122</sup> these programmes may also contract out classes of students to work in factories in labour-intensive unskilled tasks for long periods of time.<sup>1123</sup>

<sup>1119</sup> *Pakistan* – CEACR, direct request, 2011.

<sup>1120</sup> *Guatemala* – CEACR, direct request, 2009.

<sup>1121</sup> For example, in *Morocco*, a national programme to combat the use of young girls as housemaids was adopted and an action programme to combat the use of young girls in domestic labour was launched by ILO–IPEC. However, the Committee subsequently noted a lack of information on any results achieved through these measures and expressed its deep concern at the exploitation of young persons under 18 years of age employed in domestic work under conditions similar to slavery. See *Morocco* – CEACR, observation, 2011. Moreover, the Committee has noted the situation in *Kuwait* of girls who migrated to the country as domestic workers who were coerced into situations of debt bondage or involuntary servitude. While a centre was established in 2007 to regulate the situation of domestic workers and to ensure that no domestic workers under 18 were brought into the country, the exploitation of domestic workers under 18 who have entered the country remains a concern. See *Kuwait* – CEACR, direct request, 2010.

<sup>1122</sup> See, for example, *Kyrgyzstan* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, observation, 2011.

<sup>1123</sup> For example, in *China*, the work–study programmes in some regions (particularly in poorer inland provinces) oblige pupils to undertake tasks such as assembling fireworks, beadwork or other cottage industry-type production. See *China* – CEACR, observation, 2011.



481. *As the practice of compulsory labour within schools is often deep-rooted within the education system and production processes of the country, most legislative measures have proved too weak or ineffective to address the phenomenon.*<sup>1124</sup> *Moreover, in some member States, legislation prohibiting this practice is routinely ignored by local officials*<sup>1125</sup> *and is poorly enforced on the ground.*<sup>1126</sup>

482. *Regarding all of these cases, the Committee must express its grave concern at the continued removal of children from school for the purpose of forced labour, and at the significant failures to apply the relevant legislation prohibiting this practice. Recalling that all forms of forced or compulsory labour are considered to be among the worst forms of child labour, the Committee strongly emphasizes that all member States in which children are engaged in compulsory labour through their schools must take immediate and effective measures to put a stop to this exploitation in practice.*

#### *Talibé children*

483. *Another form of forced labour through educational institutions observed by the Committee is a phenomenon found in some West African countries called talibé children (sometimes referred to as almudus<sup>1127</sup> or mouhadjirin<sup>1128</sup> children). These are children who study in Koranic schools under the guardianship of religious Islamic education teachers called marabouts. These children are placed with a marabout so as to receive a Koranic education, but are often made to engage in street begging by their marabouts. This situation clearly constitutes a deviation from the legitimate purposes of this traditional educational system and its methods. While the issue of seeking alms as an educational tool falls outside the scope of the Committee's mandate, it is clear that the use of children for begging for purely economic ends cannot be accepted under Convention No. 182. Nevertheless, this is a growing phenomenon in some countries.*<sup>1129</sup> *Talibé children are often kept in conditions of servitude and are obliged to work daily, generally in street begging, in order to give the money received to their marabouts. Moreover, talibé children may be at an increased risk of trafficking, as victims of internal trafficking (from rural to urban areas),*<sup>1130</sup> *or moved across*

<sup>1124</sup> For example, in *Uzbekistan*, a decree banning child labour in cotton plantations was adopted in September 2008. Despite this legislative framework, the Committee has noted the convergence of allegations and the broad consensus among the United Nations bodies, as well as the representative organizations of employers and workers and NGOs, that the practice of mobilizing schoolchildren for work in the cotton harvest continues in *Uzbekistan*. See *Uzbekistan* – CEACR, observation, 2011.

<sup>1125</sup> For example, in *China*, the local education department of the Xinjiang Uyghur autonomous region had prohibited children between the ages of 6 and 14 from participating in the cotton harvest, and provided increased funding to the schools that had previously harvested cotton. However, the Committee has noted indications that this directive was not enforced at the local level. In *Tajikistan*, while the Education Act prohibits the employment of pupils and children in agricultural work during their studies, this legislation is routinely ignored by regional, city and district officials, and children are removed from school to work in the cotton harvest. While a presidential decree was issued in April 2009 banning the use of student labour in the cotton harvest, compulsory child labour continues to be an issue of concern. See *Tajikistan* – CEACR, direct request, 2011.

<sup>1126</sup> For example, in *Kyrgyzstan*, regulations prohibiting children from engaging in agricultural tasks are not strictly enforced. In some cases, classes are cancelled and children are sent to the fields to pick cotton, with the income generated going directly to the schools. See *Kyrgyzstan* – CEACR, observation, 2011.

<sup>1127</sup> *Gambia* – CEACR, direct request, 2010.

<sup>1128</sup> *Chad* – CEACR, direct request, 2010.

<sup>1129</sup> See, for example, *Niger* – CEACR, observation, 2011; and *Senegal* – CEACR, observation, 2011.

<sup>1130</sup> See, for example, *Mauritania* – CEACR, observation, 2010.

*borders to large cities.<sup>1131</sup> They may also be engaged in agricultural work by their marabouts<sup>1132</sup> or trafficked for this purpose.<sup>1133</sup> The Committee expresses its serious concern at the use of talibés for purely economic ends and emphasizes that this worst form of child labour must be eliminated as a matter of urgency.*

*Despite legislative efforts, the exploitation of talibé children continues*

484. The Committee observes that, generally, legislative measures taken to address this worst form of child labour have not been particularly effective and that forced begging continues in practice.<sup>1134</sup> In some member States, the legislation has not been used to prosecute any offenders and there is evidence of official tolerance of this practice.<sup>1135</sup> In such cases, the Committee expresses its serious concern at the exploitation of *talibé* children and underlines that immediate and effective measures must be taken as a matter of urgency to enforce the national legislation prohibiting the forced begging of children and to punish *marabouts* who use children for purely economic purposes.

*Small progress: Programmatic measures to reach out to talibé children*

485. As the economic exploitation of *talibés* is often a problem deeply rooted in traditional practices, some countries have attempted to take programmatic measures to address the phenomenon, with varying degrees of success. For example, two action programmes aimed at taking *talibé* children off the streets and reintegrating them into school were implemented in *Benin*, with support from ILO-IPEC.<sup>1136</sup> Furthermore, the Government of *Senegal* has implemented a project in the *daaras* (Koranic schools) with the aim of combating begging and preparing *talibé* children for social and professional life through educational and vocational activities, in addition to implementing a programme of support to 48 Koranic schools that undertake not to engage *talibé* children in begging.<sup>1137</sup> In *Mauritania*, a centre for the protection and social integration of children in difficult situations has been created which targets street children, children

<sup>1131</sup> For example, the Committee noted that *talibé* children have been brought to Dakar by Koranic teachers for the purpose of begging from other countries including *Gambia*, *Mauritania* and *Mali*. See *Gambia* – CEACR, direct request, 2010; *Mali* – CEACR, observation, 2010; and *Mauritania* – CEACR, observation, 2010.

<sup>1132</sup> See, for example, *Senegal* – CEACR, observation, 2011.

<sup>1133</sup> For example, *talibé* children from *Burkina Faso* have been trafficked to work in the rice fields of *Mali*. See, *Burkina Faso* – CEACR, observation, 2008.

<sup>1134</sup> For example, in *Mali*, while section 183 of the Penal Code provides that any person inciting a child to beg shall be liable to a sentence of imprisonment, the practice of begging by children in Koranic schools continues. See *Mali* – CEACR, observation, 2010.

<sup>1135</sup> For example, a 2006 circular of the Ministry of Justice in *Niger*, addressed to the various judicial authorities, called for the strict application of the prohibition in the Penal Code of causing another person to beg or profiting from begging for purely economic purposes. However, the Committee later noted the Government's indication that despite some arrests of *marabouts* presumed to use children for purely economic purposes, such persons had generally been released for lack of legal proof of their guilt, and that the phenomenon of child *talibés* remains a cause of serious concern in practice in *Niger*. See, *Niger* – CEACR, observation, 2011. In *Senegal*, while Act No. 02/2005 of 29 April 2005 forbids the organization for economic gain of begging by others or the exertion of pressure on a person to beg, including where the offence is against a minor, the *talibé* phenomenon remains a concern in practice. Moreover, Act No. 02/2005 has never been used to prosecute the offence of begging and there is evidence of official tolerance on a local and institutional level of the trafficking of *talibé* children for forced begging. See *Senegal* – CEACR, observation, 2011.

<sup>1136</sup> *Benin* – CEACR, direct requests, 2009 and 2011.

<sup>1137</sup> However, the Committee noted the comments of the National Federation of Independent Trade Unions of *Senegal* that while the measures taken for *talibé* children are effective, they remain inadequate. See *Senegal* – CEACR, observation, 2011.

forced to beg or children subject to economic exploitation.<sup>1138</sup> However, in all of these countries, the exploitation of child *talibés* remains an issue. The Committee therefore urges the governments concerned to strengthen the relevant programmes to prevent the engagement of *talibés* in begging for solely economic purposes, in addition to strengthening their efforts to identify, withdraw and reintegrate victims of this worst form of child labour.

## Child labour and armed conflict

### *The inclusion of forced or compulsory recruitment of children in armed conflict as a worst form of child labour*

486. The proposed conclusions relating to the adoption of Convention No. 182 discussed at the 86th Session of the Conference in 1998 did not originally include the forced or compulsory recruitment of children for use in armed conflict as one of the worst forms of child labour,<sup>1139</sup> and because of the wide range of opinions on the matter, the Committee decided to defer discussions on this issue until the 87th Session of the Conference in 1999.<sup>1140</sup> A wide majority of comments from governments favoured an explicit reference to the participation of children in armed conflict in a separate subparagraph under *Article 3* of the Convention, while others preferred leaving it to national determination under *Article 4(1)* on hazardous types of work. Given the complexity of the debate, the Conference Committee on Child Labour decided to allow time for an informal tripartite working group to work towards consensus on this question. As a result of the consultations, the informal working group presented a proposal including the forced or compulsory recruitment of children under 18 for use in armed conflict as a specific category of forced or compulsory labour prohibited under *clause (a) of Article 3*,<sup>1141</sup> which was finally adopted by the tripartite constituents as amended.<sup>1142</sup>

### *Legislative measures adopted by member States*

487. The prohibition contained in *Article 3(a)* of the Convention applies both to official armed forces and other armed groups. Nevertheless, it should be recalled that *Article 3(a)* only prohibits the forced or compulsory recruitment of children under 18, and does not cover the voluntary recruitment of children under 18 for use in armed conflict.<sup>1143</sup>

488. Among the positive trends that emerge from the comments of the Committee is that a large majority of countries have set a minimum age for compulsory recruitment into national military service at 18 years old or even beyond.<sup>1144</sup> Moreover, the legislation in some countries goes further than the requirements of the Convention by prohibiting both the compulsory and voluntary recruitment of children under 18 years of age in the armed

<sup>1138</sup> Mauritania – CEACR, observation, 2010.

<sup>1139</sup> *Child labour*, 1998, op. cit., pp. 173–177.

<sup>1140</sup> *Record of Proceedings*, ILC, 86th Session, Geneva, 1998, Report of the Committee on Child Labour, para. 145, p. 19/33.

<sup>1141</sup> *Record of Proceedings*, ILC, 87th Session, Geneva, 1999, Report of the Committee on Child Labour, para. 130, pp. 19/28–29.

<sup>1142</sup> *ibid.*, para. 163, p. 19/37.

<sup>1143</sup> The issue of voluntary recruitment is covered under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

<sup>1144</sup> See, for example, *Angola* – CEACR, direct request, 2008 (military service is compulsory for men aged between 20 and 45 years); *Kuwait* – CEACR, direct request, 2010 (everyone appointed to serve in the army must be over 21 years of age); and *Latvia* – CEACR, direct request, 2009 (citizens from the age of 19 years shall be liable for mandatory military service).

forces or armed groups.<sup>1145</sup> For example, in *Gabon*, enlistment in the armed forces is voluntary and cannot take place before the age of 20 years.<sup>1146</sup>

489. In a certain number of countries, different rules apply for compulsory and voluntary recruitment into national military service. In these situations, voluntary recruitment is authorized below 18 years of age, which does not contradict the obligations of member States under the Convention. For example, in *Israel*, a person who has attained the age of 17 and a half may be called upon for service if this person has so requested in writing and parental consent has been given, whereas a person liable for defence service is defined as an Israeli national who has attained the age of 18 and a half.<sup>1147</sup> Also, in *Singapore*, any person aged 16 years and 6 months may apply to the proper authority to be enlisted for regular service in the Singapore Armed Forces while a Singaporean citizen may be required to report for enlistment for national service provided that he is more than 18 years old.<sup>1148</sup>

490. Among the positive developments observed in recent years, the Committee has noted with satisfaction that in cases where the forced recruitment of children under 18 has been observed, some countries, including the *Central African Republic*, *Sri Lanka*, and *United Republic of Tanzania*, have recently adopted or amended legislation to prohibit the forced or compulsory recruitment of children under 18 years of age for use in armed conflict.<sup>1149</sup>

491. However, in a few cases, the national legislation still authorizes the compulsory recruitment of children under 18.<sup>1150</sup> Moreover, there are instances where the compulsory recruitment of children under 18 is prohibited, but may be permitted under special circumstances.<sup>1151</sup> The Committee accordingly requests the governments concerned to take the necessary steps to ensure that no young person under 18 years of age is recruited for use in armed conflict.

*Issues relating to the application of the legislation concerning the forced or compulsory recruitment of children for use in armed conflict*

492. While the vast majority of countries have adopted or amended legislation to prohibit the forced or compulsory recruitment of children under 18, children are still being recruited and forced to join national armed forces or illegal armed groups in practice.

<sup>1145</sup> See, for example, *Mali* – CEACR, direct request, 2006; *Serbia* – CEACR, direct request, 2006; and *Uruguay* – CEACR, direct request, 2005.

<sup>1146</sup> See *Gabon* – CEACR, direct request, 2007 (Act No. 004/98 on the general organization of national defence and public security).

<sup>1147</sup> See *Israel* – CEACR, direct request, 2011 (Defence Service Law).

<sup>1148</sup> See *Singapore* – CEACR, direct request, 2006 (Enlistment Act).

<sup>1149</sup> See *Central African Republic* – CEACR, observation, 2010 (Labour Code of 2009); *Sri Lanka* – CEACR, observation, 2007 (Penal Code (Amendment) Act, No. 16 of 2006); and *United Republic of Tanzania* – CEACR, observation, 2010 (Anti-Trafficking Act of 2008).

<sup>1150</sup> See, for example, *Dominican Republic* – CEACR, direct request, 2005; *Guinea* – CEACR, direct request, 2007; and *Niger* – CEACR, direct request, 2011.

<sup>1151</sup> For example, in *Cape Verde* and *Mozambique*, persons under 18 years of age may be forced to enrol in the armed forces in wartime. See *Cape Verde* – CEACR, direct request, 2007 (as from the age of 17); and *Mozambique* – CEACR, observation, 2010.

### Cases of progress

493. The situation of children affected by armed conflict has improved in several instances, usually along with a decrease or cessation of hostilities in the country. These include *Côte d'Ivoire*, *Rwanda* and *Sri Lanka*.<sup>1152</sup> In *Côte d'Ivoire*, the armed forces and groups have taken coordinated steps to identify and release children associated in their ranks with a view to ensuring their reintegration. Moreover, armed groups have agreed to an open-door policy in cooperation with the United Nations Operation in Côte d'Ivoire (UNOCI) whereby any allegations of the use of child soldiers can be immediately investigated with their full cooperation and with unrestricted access. As a result, the Committee has noted with satisfaction that there has been no substantiated evidence of new cases of recruitment or the use of children by armed forces or groups since October 2006. In *Rwanda*, the Government has collaborated with the UNHCR to establish mechanisms for improved child protection in refugee camps and to control children's exit from refugee camps following a surge in the recruitment of children from Rwandan-based refugee camps and communities in 2007. The Committee subsequently noted with interest that by 2009 the recruitment of children from Rwanda-based refugee camps and nearby towns had stopped. Finally, in *Sri Lanka*, the practice of the forced recruitment of children under 18 also came to an end with the ending of the armed conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE) on 18 May 2009.

494. Moreover, in its report supplied under article 19 of the ILO Constitution, the Government of *Burundi* indicated that in the context of the peace agreement signed with the *Front national de libération* (FNL), child soldiers have been demobilized and reintegrated into civilian life.

### Forced recruitment of children by armed forces and/or armed groups

495. However, in a number of countries in the African region, although the regular armed forces have committed themselves to stop recruiting children in their ranks, children continue to be recruited and used by armed groups. For example, in *Uganda*, while noting that no case of recruitment of children by the Ugandan People's Defence Force (UPDF) or its auxiliary forces has come to the attention of the Uganda Task Force on Monitoring and Reporting (UTFMR) following the signature of an action plan between the Government and the UTFMR on 16 January 2009, the Committee has nonetheless observed with concern that the Lords' Resistance Army (LRA), whose leadership originates in *Uganda* and a significant number of whose forces are also from *Uganda*, continues to abduct and recruit children. Given the LRA's expansion of its armed activities to the wider region, the Committee has stressed the urgent need to adopt and implement a strategy for increased regional joint capability so as to monitor and report the cross-border recruitment and use of children by the LRA and to ensure that those responsible for this worst form of child labour are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.<sup>1153</sup> In the *Central African Republic*, the situation in the country remains a cause of grave concern as armed groups have released relatively few children hitherto and there may have been new recruitment. Indeed, although the rebel groups of the *Armée populaire pour la restauration de la République et la démocratie* (APRD) identified children for release and reintegration,

<sup>1152</sup> See *Côte d'Ivoire* – CEACR, observation, 2010, and direct request, 2011; *Rwanda* – CEACR, direct request, 2011; and *Sri Lanka* – CEACR, observation, 2010.

<sup>1153</sup> See *Uganda* – CEACR, observation, 2010.

there are still numerous children associated in their ranks, with some cases of children as young as 9 years of age. Furthermore, many children have also been abducted and recruited by the LRA.<sup>1154</sup> Finally, in the *Congo*, the Committee has expressed its concern at the fact that, despite the peace agreements of March 2003, the process of disarmament, demobilization and reintegration has not yet started and some 1,500 children are still armed or associated with armed groups in the Pool region.<sup>1155</sup>

496. The Committee has also observed that certain other member States from other regions are still having trouble controlling the forced recruitment of children by rebel groups. For example, in *Iraq*, the Committee has noted with serious concern that children, some as young as 10 years of age, were recruited and utilized by parties to the armed conflict and non-State actors such as Al Qaeda in scouting, spying, digging holes for improvised explosive devices (IEDs), planting and transporting IEDs, videotaping attacks, as suicide bombers, as well as in more traditional combat roles. Similarly, in *Pakistan*, the Committee has noted that there have been reports of forced recruitment of under-age children by non-State actors to participate in armed conflict and terrorist activities. In *Colombia*, the number of children incorporated into illegal armed groups is still substantial and is estimated at between 8,000 and 11,000. Illegal armed groups continued to recruit children for use in armed conflict and both the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* (FARC–EP) and the *Ejército de Liberación Nacional* (ELN) continue child recruitment campaigns in schools.<sup>1156</sup>

497. In other countries the situation is even more alarming, as all parties to the armed conflict, including the government armed forces, are using child soldiers.<sup>1157</sup> For example, in *Chad*, despite a peace agreement signed on 25 October 2007 between the Government of Chad and the three main armed groups, namely the *Union des forces pour la démocratie et le développement* (UFDD), the *Rassemblement des forces pour le changement* (RFC) and the *Concorde nationale tchadienne* (CNT), children continue to be recruited and used in the conflict by all parties. The number of children associated with the armed forces and armed groups in *Chad* is estimated to be between 7,000 and 10,000. Moreover, it has been observed that Sudanese armed groups are abducting and recruiting children in and around Chadian-based refugee camps. In the *Lao People's Democratic Republic*, there have been reports of children under 18 recruited into the armed forces, with some sources stating that the compulsory recruitment of children as young as 15 years old may occur and that there exist internal conflicts with armed opposition groups increasing the risk of child recruitment by militias. In *Sudan*, despite the adoption of new legislation which prohibits the recruitment of children under 18 into the armed forces or groups, the United Nations field monitors reported that children under 18 were forced to join various armed groups, including the Sudan People's Liberation Army (SPLA) and the armed forces, the Sudan Armed Forces (SAF), in 2008. Finally, in the *Democratic Republic of the Congo*, despite a slight fall in the number of cases of recruitment of children reported in 2009, 42 per cent of the total number of cases reported that year was attributed to the regular armed forces, the *Forces armées de*

<sup>1154</sup> See *Central African Republic* – CEACR, observation, 2010.

<sup>1155</sup> Region adjacent to the *Democratic Republic of the Congo*. See *Congo* – CEACR, direct request, 2009.

<sup>1156</sup> See *Colombia* – CEACR, observation, 2011; *Iraq* – CEACR, direct request, 2011; *Pakistan* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2010.

<sup>1157</sup> See *Chad* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; and *Sudan* – CEACR, observation, 2010. See also Myanmar – CEACR, observation, 2011, Convention No. 29. Myanmar has not ratified Convention No. 182. However, in its comments under Convention No. 29, the Committee has observed that many children under 18 are being forcibly recruited by the government armed forces.

*la République démocratique du Congo (FARDC) which, in addition, accumulate the largest number of children in their ranks, partly due to the accelerated integration process of armed groups into the FARDC.*<sup>1158</sup>

**498. *The Committee emphasizes the seriousness of such violations of the Convention. Considering these situations to be of deep concern, the Committee strongly urges the governments concerned to take immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by armed groups and/or armed forces and to ensure that thorough investigations and robust prosecutions of the perpetrators of these egregious crimes are carried out and sufficiently effective and dissuasive penalties are applied in practice.***

The various roles in which children associated with armed forces and/or armed groups are used

499. The Committee has observed on many occasions that children in armed conflict are not only used as fighters or for taking direct part in hostilities. Some children are also used to support the war efforts, or may combine all these roles at the same time. They are generally used in supportive roles, such as porters, spies, cooks or messengers, and girls are often abducted for sexual purposes. Although these roles do not fall directly within the scope of the prohibition of forced or compulsory recruitment of children under 18 for use in armed conflict, the Committee has examined them under the category of slavery and forced labour. ***Where the Committee observes that children are being abducted by armed groups and forced to provide work and services, as well as becoming sex slaves, it strongly urges the governments of the countries concerned by this situation***<sup>1159</sup> ***to take effective and time-bound measures to eradicate abductions and the exaction of forced labour from children as a matter of urgency and to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice.***<sup>1160</sup>

#### *Programmatic measures*

National programmes for disarmament, demobilization and reintegration (DDR) and ILO–IPEC interregional projects

500. A significant number of countries affected by armed conflict have launched a national programmes for disarmament, demobilization and reintegration (DDR) of former combatants, including child soldiers, with the assistance of the United Nations and partner agencies or in the context of UN peacekeeping operations.<sup>1161</sup> These programmes, which promote the release of recruited children or provide reintegration and rehabilitation services for former child combatants, have produced notable results in terms of the number of children released and rehabilitated through family reunification, the establishment of rehabilitation and educational centres and the provision of psychological assistance. For example, the Committee noted with interest that the

<sup>1158</sup> Several cases are interlinked with individual criminal responsibility and are being deliberated upon by the International Criminal Court. The United Nations Security Council has also applied sanctions to various groups abusing children in this field.

<sup>1159</sup> Such as *Central African Republic* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 2009; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Sudan* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2010.

<sup>1160</sup> See, for example, *Sudan* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2010.

<sup>1161</sup> See, for example, *Burundi* – CEACR, observation, 2008; *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Liberia* – CEACR, direct request, 2011.

Government of *Sri Lanka* has taken significant measures to rehabilitate and reintegrate former child soldiers, such as reunification with their families or recruitment for foreign employment. It has also granted an amnesty to all child combatants who have surrendered and entitled them to undergo a rehabilitation programme under which accommodation, support, catch-up education and vocational training for persons under 18 years are provided in three rehabilitation centres.<sup>1162</sup> Similarly, in *Uganda*, specialized schools have been built in the northern part of the country to give support and rehabilitate former abducted children and child victims of armed conflict.<sup>1163</sup> In *Colombia*, the Government has adopted extensive measures to prevent the recruitment of children, such as developing an “early warning system” for monitoring imminent risks of violations of human rights and creating an inter-sectoral commission for the prevention of the recruitment and use of children by illegal armed groups and their reintegration into their communities.

501. Moreover, sizeable results have been achieved in the context of the ILO–IPEC interregional project on the prevention and reintegration of children involved in armed conflict, which aims to prevent the recruitment of children in armed conflict, facilitate their removal and ensure the social and economic reintegration of children formerly associated with armed forces and armed groups and other war affected children in certain Central African countries (*Burundi, Congo, Democratic Republic of the Congo and Rwanda*),<sup>1164</sup> as well as in *Colombia, Philippines* and *Sri Lanka*.<sup>1165</sup> Important results have also been achieved through the ILO–IPEC project “Youth affected by war” implemented in *Burundi* and the *Democratic Republic of the Congo* following the completion of the interregional project.

#### **ILO response to forced labour and under-age recruitment in Myanmar**

- ❑ Myanmar has not ratified Convention No. 182, but this case highlights the nexus between the worst forms of child labour and the effective elimination of forced labour.
- ❑ Within the framework of the complaints mechanism established in the Supplementary Understanding between the ILO and the Government of Myanmar in 2007, 210 formal complaints have been received since the 310th Session of the Governing Body (March 2011). Of these complaints, 155 (75 per cent) relate to under-age recruitment, and particularly the trafficking of children for forced labour and military forced labour. In this regard, the Committee welcomes the fact that, since 1 March 2011, 33 children have been released or discharged from the military in response to complaints lodged under the Supplementary Understanding. Since February 2007, a total of 208 under-age recruits have been released or discharged in response to the Supplementary Understanding. Moreover, action under the military disciplinary code is now routinely taken with regard to military personnel deemed responsible for the recruitment of minors.
- ❑ The Committee calls on the Government to continue taking measures to put a stop, in practice, to the forced recruitment of children. In this respect, it urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of the perpetrators are carried out, and that sufficiently effective and dissuasive penalties are applied in practice.
- ❑ The Committee invites the Government to consider ratifying Convention No. 182.

<sup>1162</sup> See *Sri Lanka* – CEACR, observation, 2010.

<sup>1163</sup> See *Uganda* – CEACR, observation, 2010.

<sup>1164</sup> See *Burundi* – CEACR, observation, 2008; *Congo* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, observation, 2006; and *Rwanda* – CEACR, direct request, 2010.

<sup>1165</sup> See *Colombia* – CEACR, observation, 2009; *Philippines* – CEACR, observation, 2006; and *Sri Lanka* – CEACR, observation, 2010.



### The challenge of rehabilitating former child soldiers

502. Despite the positive achievements obtained in most countries, particularly in removing children associated with armed forces, the effective reintegration of former child soldiers into civil society remains a major challenge. Indeed, observing that these children commonly face major obstacles to their social integration and are therefore at high risk of being re-recruited by armed forces, the Committee stresses the importance of ensuring that child victims of this worst form of child labour receive appropriate assistance for their rehabilitation and social integration. Among the difficulties observed, children may face ostracism and threats upon their return to their communities, as former recruiters may still be present in the same region.<sup>1166</sup> In addition, measures and strategies at the national level to adequately reintegrate child victims are often lacking, especially in relation to programmes aimed at promoting access to education or vocational training for former child victims, as well as psychological assistance.<sup>1167</sup> In several countries, children associated with armed forces may also be treated as prisoners of war.<sup>1168</sup> Former child soldiers may also be tried as war criminals in military courts and sentenced to imprisonment for military offences and other crimes allegedly committed while they were in the armed forces or groups.<sup>1169</sup> The Committee must express its concern over these practices and recalls that these children must be treated as victims rather than offenders.

### Girls associated with armed forces and/or armed groups

503. Reaching out to girls associated with armed forces and groups is a highly complex issue. On the one hand, it is more difficult to gain the release of girl child soldiers through the formal process of DDR as they are used as sexual slaves by military officials who consider them as their own property. On the other hand, girls who have escaped or have been released from armed groups prefer returning discreetly to civilian life for fear of being socially excluded if they are found to have been associated with armed forces or groups and therefore do not benefit from rehabilitation programmes and psychological assistance.<sup>1170</sup> Given the particular complexity of this situation, the Committee underlines the need to pay special attention to the removal, rehabilitation and social integration of girls.<sup>1171</sup>

### Child commercial sexual exploitation

504. *Article 3(b)* of the Convention states that the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances constitute some of the worst forms of child labour.<sup>1172</sup> Convention No. 182 is the first

<sup>1166</sup> See *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Rwanda* – CEACR, direct request, 2011.

<sup>1167</sup> See, for example, *Colombia* – CEACR, observation, 2011; *Congo* – CEACR, direct request, 2009; and *Democratic Republic of the Congo* – CEACR, observation, 2011.

<sup>1168</sup> For example, in *Iraq*, 838 children have been detained or imprisoned under custody of the Government for conflict-related reasons and face the threat of sexual and physical abuse by law enforcement officials to obtain a confession. See *Iraq* – CEACR, direct request, 2011.

<sup>1169</sup> See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011.

<sup>1170</sup> For example, in the *Democratic Republic of the Congo*, only 7 per cent of girls associated with armed forces and groups benefit from assistance through national DDR programmes.

<sup>1171</sup> See also *Congo* – CEACR, direct request, 2009.

<sup>1172</sup> For a definition of the terms “child prostitution” and “child pornography”, reference may be made to Art. 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

ILO standard to explicitly recognize sexual exploitation as a labour rights issue.<sup>1173</sup> In the preparation of the Convention, some concerns were expressed by constituents that the designation of prostitution and the production of pornography as child *labour* would legitimize these activities as forms of work.<sup>1174</sup> On this subject, the report prepared by the Office in 1998 stated that “[c]hild prostitution and child pornography ... are crimes of violence against children. They must be treated as crimes and attacked as the most serious crimes are attacked. Such repellent abuses are so far removed from any normal notion of work or labour ... yet while they are crimes they are also forms of economic exploitation.”<sup>1175</sup> In this regard, the Committee must highlight that *Article 3(b)* of the Convention only covers the sexual exploitation of children for an economic purpose, and does not encompass other forms of sexual abuse.

### *Prostitution*

Legislation prohibiting the use, procuring or offering of a child for the purpose of prostitution

#### *Positive legislative developments*

505. The Committee observes that the majority of member States have some type of legislative prohibition against involving a child in prostitution. Overall, the ratification of Convention No. 182 has yielded positive legislative results with regard to government action in this area.<sup>1176</sup> For example, between 1999 and 2009, the Committee has noted approximately 50 new legislative prohibitions on child prostitution.<sup>1177</sup> Moreover, several member States have, since the ratification of the Convention, amended their existing legislation concerning the prostitution of children to be in conformity with the Convention.

#### *Prohibiting child prostitution for both boys and girls*

506. A growing number of member States have replaced legislation which only addressed the commercial sexual exploitation of girls with legislation that protects children of both sexes. For example, in *Papua New Guinea*, the Committee noted with satisfaction that the Criminal Code was amended to prohibit offences relating to child prostitution for children of both sexes, as the previous prohibition only protected girls.<sup>1178</sup> However, in a significant number of countries, the legislation concerning commercial sexual exploitation still applies only in cases where the victim is female, meaning that boys who are victims of commercial sexual exploitation do not benefit from the protection of the Convention.<sup>1179</sup> In such cases, the Committee strongly

<sup>1173</sup> *Child labour in a globalized world*, op. cit., p. 129.

<sup>1174</sup> See, for example, the comments on the proposed Convention by the Government of Venezuela (ILC Report IV(2A), 87th Session, 1999, p. 58) and by the General Confederation of Portuguese Workers Venezuela (ILC Report IV(2A), 87th Session, 1999, pp. 14 and 54).

<sup>1175</sup> ILC Report VI(2), 86th Session, 1998, p. 52.

<sup>1176</sup> *Child labour in a globalized world*, op. cit., p. 92.

<sup>1177</sup> *Accelerating action against child labour*, op. cit., fig. 1.10.

<sup>1178</sup> *Papua New Guinea* – CEACR, observation, 2011.

<sup>1179</sup> See, for example, *Bangladesh* – CEACR, direct request, 2011; *Belize* – CEACR, direct request, 2011; *Botswana* – CEACR, direct request, 2010; *Jordan* – CEACR, observation, 2011; *Mali* – CEACR, direct request, 2010; and *Seychelles* – CEACR, direct request, 2008.

emphasizes that the Convention applies equally to boys and girls, and urges the governments concerned to take immediate measures to ensure that the relevant legislation provides protection to both sexes.

*Protecting all persons under the age of 18 from prostitution*

507. Some member States have raised the age of the prohibition of prostitution to be in line with the Convention. For example, in *Germany*, the Committee noted with interest that the Penal Code was amended to change the prohibition on using a child for the purpose of prostitution from 16 to 18 years of age.<sup>1180</sup> Nonetheless, in some member States the relevant legislation only addresses children up to 14 or 16 years of age.<sup>1181</sup> In this regard, the Committee calls on such governments to provide protection from prostitution to all children under 18 years of age.

*Prohibiting the “use” of a child for the purpose of prostitution*

**508. In several countries, the procuring or offering (that is, by a pimp) of a child for the purpose of prostitution is prohibited, but the use of a child for this purpose (that is, by a client) is not,<sup>1182</sup> although the use of a child is explicitly included in Article 3(b) of the Convention. In such cases, the Committee reminds the governments concerned of the importance of punishing all those who use children for the purpose of prostitution, and calls for immediate legislative action to address this gap.**

*Age of consent versus commercial sexual exploitation*

509. The Committee wishes to underline that a child’s consent to a sexual act does not preclude it from the prohibition; *Article 3(b)* of the Convention prohibits the use of a child under the age of 18 for prostitution, regardless of the child’s consent.<sup>1183</sup> The Committee must also emphasize that in countries where the age of consent is below 18, the prostitution of any person under the age of 18 constitutes a worst form of child labour, even if prostitution is a legal practice.<sup>1184</sup> **In this regard, the Committee wishes to underline the importance of distinguishing between the age of sexual consent and the age for protecting children from commercial sexual exploitation. The Committee considers that all persons under the age of 18 years are entitled to be protected absolutely from commercial sexual exploitation, and that neither the age of consent nor the legality of prostitution affects the obligation to prohibit this worst form of child labour.**

<sup>1180</sup> *Germany* – CEACR, direct request, 2011.

<sup>1181</sup> See, for example, *Angola* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; and *Namibia* – CEACR, direct request, 2010.

<sup>1182</sup> See, for example, *Argentina* – CEACR, observation, 2011; *Azerbaijan* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2010; *Congo* – CEACR, direct request, 2009; and *Slovenia* – CEACR, direct request, 2011.

<sup>1183</sup> *Child Labour*, Report VI(2), ILC, 86th Session, Geneva, 1998, pp. 52–53.

<sup>1184</sup> See, for example, *Switzerland* – CEACR, observation, 2010.

*Treating children engaged in prostitution as victims, not offenders*

510. **Moreover, the Committee must emphasize that children who are used, procured or offered for prostitution should be treated as victims, and not as offenders. In some countries, children engaged in prostitution are considered to have committed a criminal offence,<sup>1185</sup> and in others, these children are in practice treated as criminals.<sup>1186</sup> In all such cases, the Committee calls on the governments concerned to treat children engaged in prostitution as victims rather than offenders, and to ensure that they receive the services necessary for their rehabilitation and social reintegration.**

Good practices: Programmatic measures to combat child prostitution

511. In several countries, despite legislation prohibiting the commercial sexual exploitation of persons under 18, this remains an issue of serious concern in practice.<sup>1187</sup> In such cases, the Committee calls on the governments concerned to take immediate measures to strengthen law enforcement efforts to combat the prostitution of both boys and girls, and to take complementary programmatic measures to address this worst form of child labour.

*National plans of action against commercial sexual exploitation*

512. Since the adoption of the Convention, the Committee has noted a wide range of programmatic measures taken to address this phenomenon. These include national action plans to combat commercial sexual exploitation, particularly in South-East Asia (including *Cambodia, Indonesia, Lao People's Democratic Republic* and *Viet Nam*)<sup>1188</sup> and in Latin America (including *Colombia, Guatemala, Nicaragua, Panama, Paraguay, Uruguay* and *Bolivarian Republic of Venezuela*).<sup>1189</sup> For example, the national action plan for the prevention of the commercial sexual exploitation of boys, girls and young persons under 18 years of age in *Colombia* provided assistance and rehabilitation services to 2,294 child victims of commercial sexual exploitation in 2009.<sup>1190</sup> Other countries which have implemented such plans of action include *Bulgaria, Cameroon, Czech Republic, Mauritius, New Zealand* and *Spain*.<sup>1191</sup>

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<sup>1185</sup> See, for example, *Kyrgyzstan* – CEACR, observation, 2011; *Nigeria* – CEACR, direct request, 2005; and the *United Arab Emirates* – CEACR, observation, 2010.

<sup>1186</sup> See, for example, *Austria* – CEACR, direct request, 2011; *Egypt* – CEACR, observation, 2011; *Colombia* – CEACR, direct request, 2009; *Fiji* – CEACR, direct request, 2010; *Iceland* – CEACR, direct request, 2010; and *Rwanda* – CEACR, direct request, 2011.

<sup>1187</sup> See, for example, *Burundi* – CEACR, observation, 2008; *Thailand* – CEACR, observation, 2011; and *Rwanda* – CEACR, direct request, 2011.

<sup>1188</sup> *Cambodia* – CEACR, direct request, 2009; *Indonesia* – CEACR, direct request, 2007; *Lao People's Democratic Republic* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2010.

<sup>1189</sup> *Colombia* – CEACR, direct request, 2011; *Guatemala* – CEACR, observation, 2008, *Nicaragua* – CEACR, observation, 2010; *Panama* – CEACR, direct request, 2011; *Paraguay* – CEACR, observation, 2007; *Uruguay* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>1190</sup> *Colombia* – CEACR, direct request, 2011.

<sup>1191</sup> *Bulgaria* – CEACR, observation, 2009; *Cameroon* – CEACR, observation, 2011; *Czech Republic* – CEACR, observation, 2010; *Mauritius* – CEACR, direct request, 2008; *New Zealand* – CEACR, direct request, 2010; and *Spain* – CEACR, direct request, 2008.

*ILO–IPEC: TBP*s and regional projects

513. The Committee has also noted the work of ILO–IPEC in several countries to combat the commercial sexual exploitation of children. For example, during Phase I of *Indonesia*’s **TBP**, 177 children were withdrawn from commercial sexual exploitation and an additional 5,210 children were prevented from engaging in this worst form of child labour.<sup>1192</sup> In the *United Republic of Tanzania*, within the framework of an ILO–IPEC project, 858 children (167 boys and 691 girls) were withdrawn and 648 children (414 boys and 234 girls) were prevented from commercial sexual exploitation.<sup>1193</sup> Through the implementation of a **TBP** in *Brazil*, 723 children (54 boys and 669 girls) were prevented or removed from commercial sexual exploitation, and psychological and social support was provided to these former victims.<sup>1194</sup> Regional projects include the ILO–IPEC project entitled “Participation in preventing and eliminating the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic”, which resulted in the removal of 118 children from this worst form of child labour in *Costa Rica*, the removal of 88 children in *Panama*, the majority of whom were girls, as well as the removal of 80 children in the *Dominican Republic* through the provision of educational services and training opportunities.<sup>1195</sup>

*Taking into account the special situation of girls in combating child prostitution*

514. In most countries where statistics are available, the majority of victims of child prostitution are female,<sup>1196</sup> and therefore in many member States programmatic measures to prevent and combat this phenomenon focus particularly on girls. In this regard, the Committee has noted the statement by the Government of *New Zealand* that education and vocational training are the best strategies to prevent young girls from entering the sex industry.<sup>1197</sup> Member States implementing programmatic measures focusing on girls include *Kenya*, where 81 per cent of the children withdrawn from commercial sexual exploitation through the **TBP** operating in the country were girls<sup>1198</sup> and the *Netherlands*, where a range of measures were implemented to protect young girl victims, including residential assistance and the creation of a support network for girls fleeing this worst form of child labour.<sup>1199</sup> The Committee recognizes the value of these targeted efforts in combating the worst forms of child labour, and encourages governments undertaking such measures to pursue their efforts in this regard. Moreover, the Committee calls on governments that are developing programmatic initiatives to combat child prostitution to take particular account of the special situation of girls in both the formulation and the implementation of such programmes.

<sup>1192</sup> *Indonesia* – CEACR, observation, 2011.

<sup>1193</sup> *United Republic of Tanzania* – CEACR, observation, 2010.

<sup>1194</sup> *Brazil* – CEACR, observation, 2010.

<sup>1195</sup> *Costa Rica* – CEACR, direct request, 2011; *Panama* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, observation, 2011.

<sup>1196</sup> See, for example, *Botswana* – CEACR, direct request, 2010; *Comoros* – CEACR, direct request, 2010; *Jamaica* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; and *Russian Federation* – CEACR, direct request, 2010.

<sup>1197</sup> *New Zealand* – CEACR, direct request, 2010.

<sup>1198</sup> *Kenya* – CEACR, direct request, 2010.

<sup>1199</sup> *Netherlands* – CEACR, direct request, 2010.

## *Pornography*

### Legislative prohibition of the use, procuring or offering of a child for the production of pornography

#### *Increasing legislative conformity with the Convention regarding child pornography*

515. The Committee has observed the positive impact of the Convention regarding legislative action to address child pornography. Between 1999 and 2009, the Committee noted the adoption of nearly 50 legislative prohibitions related to child pornography. For example, following the Committee's observations that there were no provisions in the relevant legislation specifically addressing this worst form of child labour in *Jamaica*, the Committee subsequently noted with interest the adoption of the Child Pornography (Prevention) Act.<sup>1200</sup> Several countries have recently adopted more comprehensive prohibitions of child pornography. For example, the Committee noted with interest that the Penal Code in *Albania* was amended to prohibit the use of all persons under 18 for the production of pornographic materials, as the previous Penal Code only prohibited obscene acts with minors under 14 years of age.<sup>1201</sup>

#### *Absence of legislative provisions prohibiting child pornography*

516. However, significant legislative gaps remain in this area. In a number of member States, there exists no prohibition against child pornography.<sup>1202</sup> The lack of specific legislative provisions prohibiting child pornography is particularly problematic in countries where this worst form of child labour is clearly present.<sup>1203</sup> However, even in countries where the government indicates that there have been no recorded cases of child pornography, the Committee emphasizes the importance of having a specific prohibition of this worst form of child labour, pursuant to *Articles 1 and 3* of the Convention.<sup>1204</sup>

#### *Protecting both girls and boys under the age of 18 from exploitation in child pornography*

517. In a number of member States, the existing provisions relating to child pornography do not encompass all children covered by the Convention. ***In some member States, the relevant provisions only protect girls from exploitation in the production of pornography.***<sup>1205</sup> ***In such cases, the Committee recalls that the Convention applies to both boys and girls, and calls on the governments concerned to take the necessary measures to prohibit the use, procuring or offering of boys under 18 years of age for the production of pornography. Similarly the legislation of some member States only prohibits the use, procuring or offering of a child in a***

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<sup>1200</sup> *Jamaica* – CEACR, direct request, 2011.

<sup>1201</sup> *Albania* – CEACR, direct request, 2011.

<sup>1202</sup> See, for example, *Cameroon* – CEACR, observation, 2011; *Chad* – CEACR, direct request, 2010; *Dominica* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; and *Trinidad and Tobago* – CEACR, direct request, 2011.

<sup>1203</sup> See, for example, *Belize* – CEACR, direct request, 2011; and *Malawi* – CEACR, direct request, 2011.

<sup>1204</sup> See, for example, *Islamic Republic of Iran* – CEACR, direct request, 2011.

<sup>1205</sup> See, for example, *Bangladesh* – CEACR, direct request, 2011.

***pornographic production from the age of 14<sup>1206</sup> or 16 years.<sup>1207</sup> In such cases, the Committee urges the governments concerned to take the necessary measures without delay to ensure the adoption of legal provisions prohibiting and penalizing the involvement of children under 18 years of age in pornography.***

*The importance of specifically addressing the involvement of a child in the production of pornography*

518. In some member States, the prohibition relating to child pornography does not specifically address the *involvement* of a child in the production of pornographic materials. For example, in several member States, the prohibition relating to child pornography applies only to the possession and dissemination of child pornographic materials,<sup>1208</sup> and does not specifically relate to the production of such materials (or more particularly the use, procuring or offering of a child for such a purpose).<sup>1209</sup> Moreover, in some member States it is prohibited to expose a child to pornography, but this prohibition does not cover the *involvement* of a child in the production of such materials.<sup>1210</sup> The Committee is of the view that such provisions do not constitute adequate prohibitions in line with *Article 3(b)* of the Convention.

*Prohibiting child pornographic performances*

519. Furthermore, the Committee wishes to highlight the issue of live pornographic performances by children. While the majority of child victims of this worst form of child labour are exploited for the purpose of photographs and recordings, the Convention is quite clear in that it specifies that this prohibition must apply not only to the production of pornographic materials, but also to pornographic *performances*. ***In countries where non-recorded pornographic performances appear to be a problem in practice, the Committee urges the governments concerned to ensure that the relevant prohibition addressing the use, procuring and offering of a child for pornographic purposes also applies to non-recorded performances.***<sup>1211</sup>

<sup>1206</sup> Cape Verde – CEACR, direct request, 2011.

<sup>1207</sup> Angola – CEACR, observation, 2011; Antigua and Barbuda – CEACR, direct request, 2011; and Australia – CEACR, direct request, 2011.

<sup>1208</sup> The medium of dissemination and consumption of pornographic material is not directly addressed in the Convention, and this is left to the national lawmaker. However, the existence of such material indicates a violation of the prohibition against using a child to produce pornographic materials. See *Child labour*, op. cit., p. 60.

<sup>1209</sup> See, for example, Bahrain – CEACR, observation, 2011; Botswana – CEACR, direct request, 2010; Islamic Republic of Iran – CEACR, direct request, 2011; Singapore – CEACR, direct request, 2010; and United Kingdom (Guernsey) – CEACR, direct request, 2011.

<sup>1210</sup> See, for example, Mozambique – CEACR, observation, 2010.

<sup>1211</sup> See, for example, Thailand – CEACR, observation, 2011.

*Lack of clarity in the definition of child pornography*

520. In some countries, the prohibitions related to child pornography are quite vague,<sup>1212</sup> and may simply prohibit involving a person in “unlawful and immoral” activities or “debauchery”.<sup>1213</sup> In such cases, it is essential to determine whether such broad provisions are, in practice, used to prosecute persons who engage children in pornographic productions. If these provisions are not, in practice, used to prosecute persons who exploit children in pornographic productions, the Committee must urge the governments concerned to replace unclear provisions with specific prohibitions of this worst form of child labour.

## Positive initiatives to combat the exploitation of children in pornography

521. The Committee consistently encourages governments to take comprehensive measures to prevent and combat the use of children in pornographic productions. While the Convention focuses on the actual use of a child for the production of materials, measures to reduce the demand for child pornographic materials contributes to preventing the future exploitation of children in this worst form of child labour. For example, in *Bulgaria*, a telephone hotline to combat illegal content in Bulgarian Internet space has been developed, which receives information from the public concerning child pornographic materials.<sup>1214</sup> In *Mexico*, the Internet Police Unit deactivated 1,113 websites containing child pornography.<sup>1215</sup> Due to the global nature of this phenomenon (as materials exploiting children for pornographic purposes are often disseminated transnationally via the Internet and other means), these measures should be implemented in all member States where such materials are consumed, even if the materials are not often produced within the country. An example of this is *France*, where a platform for the channelling of reports concerning illegal content on the Internet was established, enabling Internet surfers to report online content such as child pornography (approximately 33,735 reports were received between January and September 2009).<sup>1216</sup> Efforts to address the consumption of child pornographic materials may also contribute to the identification of persons who produce such material. ***The Committee is of the view that measures to stem the dissemination of these pornographic materials, and to prosecute the consumers of such materials, are important contributions to combating this worst form of child labour, as they decrease the demand for these materials.***

522. In addition, many positive initiatives have been undertaken by law enforcement officials to enforce legislation prohibiting the involvement of children in the production of pornography. For example, the Committee noted with interest a number of measures implemented in *Ukraine* to combat pornography, including the initiative by the police to dismantle the networks of individuals and organized criminal groups involved in

<sup>1212</sup> For example, in *Liberia*, while a draft bill aimed to prohibit the “sexual exploitation” of a child, it was not clear whether this encompassed the use, offering or procuring of a child for the production of pornography or pornographic performances. *Liberia* – CEACR, direct request, 2011.

<sup>1213</sup> For example, with regard to *Pakistan* (where the legislation prohibits selling, hiring or involving a person under 18 in “unlawful and immoral” purposes) and the *United Arab Emirates* (where the Penal Code prohibits inciting debauchery or exploiting the debauchery of another person), the Committee has requested the respective Governments to clearly indicate whether the production of pornography is encompassed in these prohibitions. See *Pakistan* – CEACR, direct request, 2011; and *United Arab Emirates* – CEACR, direct request, 2010.

<sup>1214</sup> *Bulgaria* – CEACR, observation, 2009.

<sup>1215</sup> *Mexico* – CEACR, observation, 2011.

<sup>1216</sup> *France* – CEACR, direct request, 2011.



pornography (22 groups discovered in 2005 and 65 in 2006), and initiatives to verify the legality of a significant number of photographic studios and modelling agencies.<sup>1217</sup> Moreover, *Canada's* National Child Exploitation Coordination Centre coordinated an investigation into child sexual victimization on the Internet, resulting in 50 arrests on charges which included the making and distributing of child pornography.<sup>1218</sup> In *Belarus*, law enforcement officials stopped the activities of an organized criminal group that had produced and disseminated child pornography in 2008, and five pornographic studios were closed down from 2008–09.<sup>1219</sup>

**523. However, the Committee observes that the relevant legislation is not always applied in practice. Where this is the case, the Committee must express its concern regarding such violations of the Convention, and calls on all member States to take the necessary measures to ensure that thorough investigations and robust prosecutions are carried out in practice against persons who use, procure or offer persons under 18 years of age for the production of pornography or pornographic performances.**

### *Child sex tourism*

#### Extraterritorial legislation to combat child sex tourism and other legislative initiatives

524. Child sex tourism is a difficult problem to address, as perpetrators are not citizens of the State in which the offence is committed, making prosecution difficult. However, the Committee observes the positive trend of countries enacting legislation to combat child sex tourism.<sup>1220</sup> Specifically, such provisions permit the punishment of national citizens who engage children in prostitution outside the national territory, with a view to combating the phenomenon of citizens travelling to other countries to take advantage of weaker legislation or enforcement regarding the commercial sexual exploitation of children. For example, the Crimes Amendment Act of 2004 in *New Zealand* stipulates that the prohibition on engaging a child in prostitution applies to sexual conduct with children and young people outside the country.<sup>1221</sup> In *Suriname*, the Penal Code was amended in 2009 to provide that sexual offences committed with a person under 18 outside the country are punishable within *Suriname*.<sup>1222</sup> In the *United States*, section 2423(b) of Title 18 of the United States Code prohibits travelling in foreign commerce for the purpose of engaging in any prohibited sexual act with a person under 18.<sup>1223</sup> In *Spain*, the Penal Code provides for the prosecution of Spanish nationals and residents of *Spain* if they commit an offence in another country relating to the commercial sexual exploitation of children. Several destination countries for perpetrators of child sex tourism have also adopted penal legislation to specifically combat this offence, such as *Mexico*, *Morocco* and *Panama*.<sup>1224</sup>

<sup>1217</sup> *Ukraine* – CEACR, observation, 2008.

<sup>1218</sup> *Canada* – CEACR, direct request, 2011.

<sup>1219</sup> *Belarus* – CEACR, direct request, 2011.

<sup>1220</sup> One priority is to combat local sex tourism through national legislation, such as criminal legislation. However, cross-border cases can be addressed through extraterritorial legislation.

<sup>1221</sup> *New Zealand* – CEACR, direct request, 2006 (section 144A Crimes Amendment Act of 2004 and the Prostitution Reform Act of 2003).

<sup>1222</sup> *Suriname* – CEACR, direct request, 2010 (Title XIV of the Penal Code).

<sup>1223</sup> *United States* – CEACR, observation, 2005.

<sup>1224</sup> *Mexico* – CEACR, observation, 2011; *Morocco* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *Spain* – CEACR, direct request, 2005.

## Challenges in enforcing the prohibition of child sex tourism

525. *Enforcing the relevant legislation has been difficult in some countries, partially due to the transnational nature of this crime. The Committee has noted with concern a number of countries where child sex tourism continues despite legislative provisions,*<sup>1225</sup> *in addition to a number of countries whose citizens travel for the purpose of child commercial sexual exploitation.*<sup>1226</sup> *The Committee expresses its serious concern regarding the continuation of child sex tourism and strongly urges both source and destination countries of child sex tourism to strengthen their efforts to investigate, prosecute and convict perpetrators of this worst form of child labour, and to cooperate fully to make such efforts more effective.*

## Good practices in preventing and combating child sex tourism

526. A variety of programmatic measures have been undertaken to address the phenomenon of child sex tourism in both source and destination countries of this worst form of child labour. For example, in the *Philippines*, the Department of Tourism has adopted the “Child wise tourism in the Philippines” programme, in partnership with Child Wise Tourism *Australia*, which encourages resorts and tour operators to report suspected cases of child sex tourism.<sup>1227</sup> In the *Dominican Republic*, an ethical code for the tourism sector is being implemented and awareness-raising activities on commercial sexual exploitation have been carried out in the tourist industry.<sup>1228</sup> In addition, in *Germany*, pursuant to the Plan of Action to Protect Children and Young Persons from Sexual Violence and Exploitation a “Code of Conduct for Protecting Against Child Sexual Exploitation in Tourism” was developed, and an awareness-raising campaign on child sexual exploitation was implemented, involving in-flight videos and a website.<sup>1229</sup> Moreover, in *Sri Lanka*, the National Action Plan to Combat Child Sex Tourism was implemented by UNICEF and the Sri Lanka Tourist Board with the aim of raising awareness of the tourist industry’s zero-tolerance policy in relation to child sex tourism, maximizing the involvement of the private tourism sector in combating the phenomenon and empowering children and adolescents.<sup>1230</sup> Similarly, in *Chile*, the “*No hay excusas*” awareness-raising campaign was launched in September 2009 with the cooperation of the National Tourism Service and ILO–IPEC, which included the circulation of materials in *Chile*’s three border areas and main airport, and the slogan “in Chile sexual exploitation is a crime” was stamped on all entry visas. The Committee welcomes such initiatives and encourages the governments undertaking them to pursue or strengthen

<sup>1225</sup> For example, in *Fiji*, there has been a rise in child sex tourism and in *Jamaica*, child sex tourism continues to be a problem in the country’s resort areas. Despite an amendment to the Penal Code of *Morocco* in 2003 criminalizing sex tourism, child prostitution and sex tourism involving young Moroccans and immigrants, particularly boys, is persistent. Moreover, in *Indonesia*, while the Minister of Culture and Tourism adopted Regulation No. PM.30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism in 2010, child sex tourism remains prevalent in most urban areas and tourist destinations, such as Bali and Riau Island, and between 40,000 and 70,000 Indonesian children are victims of commercial sexual exploitation. See *Fiji* – CEACR, direct request, 2011; *Indonesia* – CEACR, observation, 2011; *Jamaica* – CEACR, observation, 2011; and *Morocco* – CEACR, observation, 2011; in addition to *Chile* – CEACR, direct request, 2011; and *Dominican Republic* – CEACR, observation, 2011.

<sup>1226</sup> For example, the Committee has noted that nationals of *Spain*, *Italy*, *Germany*, *Canada* and the *United States* travel to engage in child sex tourism (see *Dominican Republic* – CEACR, observation, 2011), as well nationals of *Sweden* (see *Sweden* – CEACR, direct request, 2011).

<sup>1227</sup> *Philippines* – CEACR, direct request, 2008.

<sup>1228</sup> *Dominican Republic* – CEACR, observation, 2011.

<sup>1229</sup> *Germany* – CEACR, direct request, 2011.

<sup>1230</sup> *Sri Lanka* – CEACR, observation, 2010.

their efforts in this regard. Furthermore, in cases where child sex tourism is prevalent, the Committee considers that the governments should take specific measures aimed at combating this phenomenon, including measures to raise awareness among actors directly related to the tourism industry, such as associations of hotel owners, tour operators, unions of taxi drivers and owners of bars, restaurants and their employees.<sup>1231</sup>

## Use, procuring or offering of children for illicit activities

### *The inclusion of the use, procuring or offering of a child for illicit activities as a worst form of child labour*

527. The first questionnaire sent to the tripartite constituents on the possible content of the Convention proposed *Article 3, clauses (b) and (c)*, of the final text of the Convention as a single item worded “*the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances, production of or trafficking in drugs or other illegal activities*”.<sup>1232</sup> During the discussions at the 86th Session of the Conference, the constituents agreed to separate the two items, that is prostitution, production of pornography or pornographic performances, and illicit activities, into two different clauses for the purposes of clarity.<sup>1233</sup> Following the discussions, the Conference adopted amendments replacing the word “*engagement*” with the word “*procuring*” and adding to the clause the specific example of using, procuring or offering a child “*for the production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties*”. In 1999, the Office proposed that reference be made to “*illicit activities*” rather than to “*illegal activities*” for the following reasons: that by using the expression “*illegal*”, an activity that had not been prohibited by national law might be considered to fall outside the scope of *clause (c)*; and that any activity considered illegal by the national legislation may fall within the scope of *clause (c)*. The Office also suggested simplifying the phrase, adding the specific example to read as “*in particular for the illicit production and trafficking of drugs as defined in the relevant international treaties*”.<sup>1234</sup> These proposals became the final terms used in *Article 3(c)*.<sup>1235</sup> Moreover, during the elaboration of Recommendation No. 190, Paragraph 12(c), the constituents agreed to refer to another example of illicit activities other than the production and trafficking of drugs, namely “*activities which involve the unlawful carrying or use of firearms or other weapons*”.

<sup>1231</sup> See, for example, *Dominican Republic* – CEACR, observation, 2011.

<sup>1232</sup> *Child labour*, 1998, op. cit., Questionnaire, point 7(b), p. 4.

<sup>1233</sup> *Record of Proceedings*, ILC, 86th Session, Geneva, 1998, Report of the Committee on Child Labour, paras 131–140, pp. 19/30–32.

<sup>1234</sup> The Office views the relevant treaties as the Single Convention on Narcotic Drugs, 1961; the Convention on Psychotropic Substances, 1971; the Protocol amending the Single Convention on Narcotic Drugs, 1972; and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. See *Child labour*, 1999, op. cit., p. 61, footnote 9 (Office commentary).

<sup>1235</sup> *ibid.*, p. 61 (Office commentary).

*Legislative measures adopted by member States to prohibit the use, procuring or offering of children for illicit activities*

528. A substantial number of countries have adopted legislation to prohibit the use, procuring or offering of children under 18 for the production and trafficking of drugs.<sup>1236</sup> The prohibition of this worst form of child labour is applied by member States through different types of legislation and in different ways. In most cases, it is applied through criminal law,<sup>1237</sup> child protection acts,<sup>1238</sup> specific acts prohibiting trafficking in drugs,<sup>1239</sup> or is included in the list of prohibited types of hazardous work which is generally contained in the Labour Code.<sup>1240</sup>

The production and trafficking of drugs

529. In some cases, the legislative provision simply reproduces *Article 3* of the Convention as, for example, in *Burkina Faso*, *Central African Republic* and *Fiji*,<sup>1241</sup> or is limited to the use, procuring or offering of a child for the production and trafficking of drugs and does not prohibit the use of a child for other types of illicit activities.<sup>1242</sup> For example, in *China*, the Criminal Law states that whoever uses or urges a young person to traffic, transport, manufacture or sell drugs to young persons commits an offence.

Begging and other types of illicit activities

530. In other cases, the legislation covers different forms of illicit activities. Among the different types of activities considered as illicit other than the production and trafficking of drugs, the Committee has observed that the legislation in some countries also prohibits the use of children for forced or organized begging,<sup>1243</sup> gambling,<sup>1244</sup> the unlawful carrying or use of firearms or other weapons,<sup>1245</sup> or for the commission of an offence<sup>1246</sup> or a crime using violence or the threat of violence.<sup>1247</sup> For example, in

<sup>1236</sup> See, for example, *Barbados* – CEACR, direct request, 2005; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Nicaragua* – CEACR, direct request, 2005; *Niger* – CEACR, direct request, 2005; *Panama* – CEACR, direct request, 2011; and *Slovakia* – CEACR, direct request, 2009.

<sup>1237</sup> See, for example, *Denmark* – CEACR, direct request, 2006; *Ethiopia* – CEACR, direct request, 2010; and *Kyrgyzstan* – CEACR, direct request, 2009.

<sup>1238</sup> See, for example, *Kenya* – CEACR, direct request, 2005; *Saint Lucia* – CEACR, direct request, 2010 (use of children in begging); and *South Africa* – CEACR, direct request, 2008.

<sup>1239</sup> See, for example, *Grenada* – CEACR, direct request, 2009; *Oman* – CEACR, direct request, 2007; and *Peru* – CEACR, direct request, 2006.

<sup>1240</sup> In *Jamaica*, the Committee has observed that the draft list of hazardous work prohibited for children includes involving children in illicit activities and the drug industry, as well as more specific provisions prohibiting children from cultivating ganja and guarding ganja fields. See *Jamaica* – CEACR, observation, 2011. In *Liberia*, the sale and trafficking of narcotic drugs is under consideration for inclusion on a list of hazardous types of work prohibited for persons under 18. See *Liberia* – CEACR, direct request, 2011. See also *Republic of Moldova* – CEACR, direct request, 2010.

<sup>1241</sup> See *Burkina Faso* – CEACR, direct request, 2009; *Central African Republic* – CEACR, direct request, 2010; and *Fiji* – CEACR, direct request, 2009.

<sup>1242</sup> See *China* – CEACR, direct request, 2006; *Madagascar* – CEACR, direct request, 2008; and *Romania* – CEACR, direct request, 2010.

<sup>1243</sup> See, for example, *Belgium* – CEACR, direct request, 2009; *Cyprus* – CEACR, direct request, 2009; and *Dominica* – CEACR, direct request, 2010.

<sup>1244</sup> See, for example, *Singapore* – CEACR, direct request, 2010.

<sup>1245</sup> See, for example, *United States* – CEACR, observation, 2005.

<sup>1246</sup> See, for example, *Austria* – CEACR, direct request, 2007; *Estonia* – CEACR, direct request, 2005; and *Islamic Republic of Iran* – CEACR, direct request, 2011.

<sup>1247</sup> See, for example, *Armenia* – CEACR, direct request, 2011.

*Kazakhstan*, the Criminal Code imposes penalties on any person who involves a minor in the commission of antisocial acts, including the use of drugs and alcohol, prostitution, vagrancy or begging.<sup>1248</sup> In the *Philippines*, the legislation provides that any person who uses, coerces, forces or intimidates a child under 18 years of age to beg, to act as a middleman in drug trafficking or to undertake illegal activities, commits an offence.<sup>1249</sup>

#### Prohibiting the *use* of children for illicit activities

531. A few countries have nonetheless still not adopted legislation to prohibit the *use* of children under 18 in illicit activities.<sup>1250</sup> In most of these cases, although persons under 18 years of age are not legally permitted to perform illicit activities, the persons *who use, procure or offer* a child to perform the prohibited types of illicit activities are not liable to a penalty under national legislation.

532. Similarly, with regard to trafficking in drugs, the Committee has noted that in many instances while the legislation criminalizes the manufacturing, possession, use or trafficking in drugs, it does not specifically establish offences related to the use, procuring or offering of a child by other persons for the production and trafficking of drugs.<sup>1251</sup> ***The Committee thus calls on the governments concerned to ensure, as a matter of urgency, that the act of using, procuring or offering a child for the production and trafficking of drugs, as well as other types of illicit activities, is prohibited in national legislation.***<sup>1252</sup>

#### *Issues of application of the legislation relating to the use, procuring or offering of children for illicit activities*

##### Most common types of illicit activities in which children are used

533. Among the types of illicit activities for which children are used by adults in practice, the Committee has observed, for instance, that criminal organizations use children for, inter alia, transporting weapons and carrying out arson attacks or destroying public or private property,<sup>1253</sup> illicit activities such as housebreaking and petty theft<sup>1254</sup> and that there are reports of children being engaged by adults in car breaking, housebreaking, selling drugs and selling stolen goods.<sup>1255</sup>

##### Street children

534. The Committee has also observed that street children are particularly vulnerable to the worst forms of child labour and to becoming involved in illicit activities. Therefore, where the Committee observes that a large number of children are living or working in

<sup>1248</sup> See *Kazakhstan* – CEACR, direct request, 2007. See also *Lithuania* – CEACR, direct request, 2010; and *Togo* – CEACR, direct request, 2011.

<sup>1249</sup> See *Philippines* – CEACR, direct request, 2005.

<sup>1250</sup> See, for example, *Finland* – CEACR, direct request, 2011; *Mali* – CEACR, direct request, 2010; and *Paraguay* – CEACR, direct request, 2011.

<sup>1251</sup> See, for example, *Bahamas* – CEACR, direct request, 2009; *Cambodia* – CEACR, direct request, 2009; and *Ireland* – CEACR, direct request, 2007.

<sup>1252</sup> The other types of activities include the use of children in begging. See, for example, *Gambia* – CEACR, direct request, 2010; and *Zambia* – CEACR, direct request, 2010.

<sup>1253</sup> See, for example, *Haiti* – CEACR, direct request, 2011.

<sup>1254</sup> See, for example, *Lesotho* – CEACR, observation, 2011.

<sup>1255</sup> See, for example, *Swaziland* – CEACR, direct request, 2010.

the streets, it urges governments to take specific measures to protect these children.<sup>1256</sup> Indeed, in many cases, Roma children and unaccompanied minors are often subject to serious exploitation, including forced begging.<sup>1257</sup>

### *Programmatic measures*

535. A substantial number of countries have adopted various measures that contribute to preventing the involvement of children in illicit activities or provide direct assistance for the removal of children involved or at risk of being involved in these types of activities. Such measures may take the form of financial assistance to children from poor households,<sup>1258</sup> or may consist of providing services in childcare centres, such as accommodation, food or education, as well as family reintegration measures.<sup>1259</sup> For example, since 2008, children's day centres have been established in *Lithuania* offering at-risk children (from families who have social, psychological or other problems) and their families a variety of social services without separating children from their parents.<sup>1260</sup>

### Good practices: Programmes designed specifically for children involved in illicit activities

536. A few countries have adopted specific programmes or measures to prevent the involvement of children under 18 in drug trafficking or other illicit activities and to provide assistance for their rehabilitation and social integration, such as in the *Philippines*, where an ILO-IPEC one-year action programme to prevent and eliminate the use of children under 18 years of age in the production, sale and trafficking of drugs was launched in 2003; in *Indonesia*, where the Ministry of Women's Empowerment and Child Protection has concluded a Memorandum of Understanding with various judicial institutions to encourage the use of a restorative justice approach with regard to children in conflict with the law, including those under 18 found to be guilty of selling, producing or trafficking drugs; and in *South Africa*, where a pilot programme for children used by adults and older children to commit crime (CUBAC) has been designed in the framework of an ILO-IPEC programme.<sup>1261</sup>

537. The Committee is of the firm view that similar programmatic measures or initiatives are essential, along with the implementation and enforcement of legislative provisions, to prevent and eliminate the use of children in illicit activities.

<sup>1256</sup> See, for example, *Cameroon* – CEACR, observation, 2011; *Pakistan* – CEACR, direct request, 2011; and *Portugal* – CEACR, direct request, 2010.

<sup>1257</sup> For example, in the case of *Italy*, among the unaccompanied foreign minors who were reported to be working in the streets in 2007, some were victims of labour exploitation, petty crimes and begging. See *Italy* – CEACR, direct request, 2011. See also *Angola* – CEACR, direct request, 2008; *Czech Republic* – CEACR, direct request, 2011; and *Greece* – CEACR, direct request, 2011.

<sup>1258</sup> See, for example, *Barbados* – CEACR, direct request, 2010; *Mongolia* – CEACR, direct request, 2010; and *New Zealand* – CEACR, direct request, 2010.

<sup>1259</sup> See, for example, *China* – CEACR, observation, 2011; *Republic of Moldova* – CEACR, direct request, 2010; and *Pakistan* – CEACR, direct request, 2011.

<sup>1260</sup> See *Lithuania* – CEACR, direct request, 2010.

<sup>1261</sup> See *Indonesia* – CEACR, observation, 2011; *Philippines* – CEACR, direct request, 2010; and *South Africa* – CEACR, direct request, 2010.

### Specific measures to protect street children

538. In most cases, the governments concerned by the phenomenon of street children have taken specific measures to address this situation. Shelters and centres for the rehabilitation and social integration of street and vulnerable children have been established either by government agencies, non-governmental organizations or UNICEF to address the particular needs and concerns of these children, and to provide education, health, counselling and legal services or family support.<sup>1262</sup> For example, in the case of *Bulgaria*, the Committee noted with interest that child protection unit mobile teams comprised of police authorities, representatives of non-governmental organizations and local commissions were surveying the streets in order to identify street children and ensure their protection.<sup>1263</sup> In *Paraguay*, the Committee has also noted with interest that a Programme for the Progressive Reduction of Child Labour in the Streets (ABRAZO) has been established in recent years with the aim of helping families in situations of extreme poverty by providing them with financial allowances on condition that the children stop working in the streets and attend school.

539. Nonetheless, the Committee has noted that a significant number of countries still continue to take insufficient measures to address specifically the situation of children living or working in the streets and to ensure their rehabilitation and social integration.<sup>1264</sup> The Committee emphasized the necessity of taking effective and time-bound measures to protect street children from the worst forms of child labour and to ensure their rehabilitation and social integration through the setting up of specialized institutions or shelters.

### Hazardous work

#### *Hazardous work as a worst form of child labour*

540. The Global Report of 2010 indicates that a considerable number of children are employed in hazardous work globally: nearly 53 million children (4.3 per cent) aged 5 to 14 years, and over 62 million children (16.9 per cent) aged 15 to 17 years were estimated to be performing hazardous labour in 2008.<sup>1265</sup> In order to combat this problem, *Article 3(d)* of the Convention provides that work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, is considered to be one of the worst forms of child labour and therefore must be prohibited for all children under 18 years of age.<sup>1266</sup>

541. The minimum age of 18 for admission to hazardous work has been the subject of much debate. It is important to note, however, that the objective of the Convention is to eradicate “work that is so intolerable, so bad that no child or young person should be engaged in it” and that the age of 18 was chosen to be consistent with the higher minimum age laid down in Convention No. 138 for hazardous work and the general

<sup>1262</sup> See, for example, *Central African Republic* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2010; and *Lao People’s Democratic Republic* – CEACR, direct request, 2010.

<sup>1263</sup> See *Bulgaria* – CEACR, observation, 2009.

<sup>1264</sup> See, for example, *Chad* – CEACR, direct request, 2010; *Greece* – CEACR, direct request, 2009; and *Saudi Arabia* – CEACR, direct request, 2010.

<sup>1265</sup> *Accelerating action against child labour*, op. cit., table 1.2.

<sup>1266</sup> Reference may also be made in this regard to *Art. 3(1)* of Convention No. 138 which also prohibits hazardous work for children under 18.

definition of “child” in the Convention on the Rights of the Child. It does not in any way affect the minimum ages in Convention No. 138.<sup>1267</sup>

#### *Hazardous work and determination of the types of hazardous work*

542. The Convention does not offer a definition of hazardous work. However, *Article 4(1)* of the Convention provides that the types of work referred to under *Article 3(d)* shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraph 3 of Recommendation No. 190, which provides a non-exhaustive list of types of hazardous work. While it was proposed that the list in Paragraph 3 of the Recommendation be incorporated in *Article 3(d)* or *Article 4(1)* of the Convention, to specify more clearly what should, as a minimum, be considered as hazardous work,<sup>1268</sup> this was rejected in favour of allowing member States more flexibility according to their national circumstances. Therefore, in accordance with the Convention, it is left to the discretion of member States, after consultation with the organizations of employers and workers concerned, to elaborate a list of types of hazardous work in which children under 18 years of age are prohibited to participate. In order to do this, the competent authorities of each member State must undertake to identify where the types of work so determined exist, by virtue of *Article 4(2)*,<sup>1269</sup> as well as to periodically examine and revise the list of types of hazardous work, in conformity with *Article 4(3)*, all in consultation with the organizations of employers and workers concerned.

#### *General prohibition of hazardous work for children under 18 years of age*

543. A positive trend that has emerged from the Committee’s comments is that a great number of countries have adopted legislation to prohibit children under 18 years of age from carrying out hazardous work.<sup>1270</sup> For example, the Committee noted with interest the adoption of Decree No. 2007-563 of 2007 respecting child labour in *Madagascar*, section 2 of which prohibits the engagement of young persons below 18 years of age in work which involves the risk of danger and in types of work which are likely to harm their health or their physical, mental, spiritual, moral or social development.<sup>1271</sup> Similarly, the Committee has noted with interest that, under the Labour Law of 2008 of

<sup>1267</sup> *Child labour*, 1999, op. cit., p. 39.

<sup>1268</sup> *ibid.*, p. 62.

<sup>1269</sup> See, for example, *Guinea* – CEACR, direct request, 2007; *Paraguay* – CEACR, direct request, 2011; *Peru* – CEACR, direct request, 2011; *Serbia* – CEACR, direct request, 2010; *Slovakia* – CEACR, direct request, 2006; *Swaziland* – CEACR, direct request, 2010; *Thailand* – CEACR, direct request, 2011; *Tunisia* – CEACR, direct request, 2006; *Ukraine* – CEACR, direct request, 2006; and *Yemen* – CEACR, direct request, 2010.

<sup>1270</sup> *Child labour in a globalized world*, op. cit., p. 93. Recent examples of countries that have adopted appropriate hazardous work legislation include *Cambodia* – CEACR, direct request, 2011; *Chile* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Gabon* – CEACR, direct request, 2011; *Israel* – CEACR, direct request, 2009; *Lao People’s Democratic Republic* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2009; *Mali* – CEACR, direct request, 2010; *Montenegro* – CEACR, direct request, 2010; *Saint Lucia* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; *Singapore* – CEACR, direct request, 2008; *South Africa* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011. For an overview of the status of the legislation on hazardous work in the world, see *Children in hazardous work: What we know: What we need to do*, (Geneva, ILO, 2011).

<sup>1271</sup> *Madagascar* – CEACR, direct request, 2010.



*China (Macau Special Administrative Region)*, it is prohibited to employ minors under 18 years of age in certain types of hazardous work and occupations.<sup>1272</sup>

#### Lists of types of hazardous work

544. The Committee has also noted many instances where countries have duly adopted a list of types of hazardous work prohibited for children under 18 years of age, some of which can be extremely detailed. For example, in *Cyprus*, Law No. 48(I) of 2001 on the Protection of Young Persons at Work contains a non-exhaustive list of 115 types of work and processes prohibited for young persons under 18.<sup>1273</sup> Similarly, in *Brazil*, the Committee noted with interest the adoption of Decree No. 6.481 of 2008, which approves a detailed list of more than 90 worst forms of child labour in which the employment of young persons under 18 years of age is prohibited.<sup>1274</sup> In *Mongolia*, the Committee noted with interest that, pursuant to Order No. 107 of the Minister of Labour of 2008, a list of types of prohibited work for minors was adopted which contains 39 jobs and services, seven labour conditions and 53 working positions in 11 economic sectors that are prohibited for minors.<sup>1275</sup>

545. The prohibited types of hazardous work that have been adopted by member States include, but are not limited to, the following:<sup>1276</sup>

- work in construction and welding, mines and quarries, or the asphalt industry;<sup>1277</sup>
- work underground, underwater, at dangerous heights or in confined spaces;
- demolition work, the digging of underground galleries, terracing in narrow and deep excavations and work in sewers;
- work in petroleum and the extraction of natural resources, or work in ships;
- work involving the use of compressed air, including pressure chambers and diving;
- hazardous work in domestic or household service;

<sup>1272</sup> *China (Macau Special Administrative Region)* – CEACR, direct request, 2011.

<sup>1273</sup> *Cyprus* – CEACR, direct request, 2005.

<sup>1274</sup> *Brazil* – CEACR, direct request, 2010.

<sup>1275</sup> *Mongolia* – CEACR, direct request, 2010.

<sup>1276</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Barbados* – CEACR, direct request, 2011; *Cambodia* – CEACR, direct request, 2011; *Georgia* – CEACR, direct request, 2009; *Indonesia* – CEACR, direct request, 2008; *Philippines* – CEACR, observation, 2010; *Romania* – CEACR, direct request, 2008; *Switzerland* – CEACR, direct request, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Yemen* – CEACR, direct request, 2010.

<sup>1277</sup> In a number of cases, member States have had difficulty in applying their legislation pertaining to the prohibition of hazardous work in practice and suffer a widespread problem of children being engaged in certain areas of hazardous work. This can be the case in the mining sector. For example, in *Peru* – CEACR, observation, 2010, while Act No. 28992 of 2007 prohibits the employment of persons under 18 years of age in mining of any description, the Committee noted with deep concern that the number of children working in artisanal mines in Peru is estimated at around 50,000 and that both boys and girls are in practice engaged in hazardous types of work in small artisanal mines, with girls being increasingly frequently involved in extraction, transport and transformation activities. The Committee noted a similar problem in *Côte d'Ivoire* – CEACR, observation, 2011, where it observed that, although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice, and in the *Plurinational State of Bolivia* – CEACR, observation, 2009, where, although section 134 of the Code on Children and Young People contains a detailed list of types of hazardous work prohibited for young people, some of which are related to the work done by children in mines, the use of child labour in hazardous work in mines is a matter of concern. See also *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Niger* – CEACR, observation, 2011.

- work in the agricultural sector which exposes children to dangerous conditions, to pesticides or insecticides, work in cash crops;
- work in zoos or parks containing wild or poisonous animals, work involving incineration or butchery, work in abattoirs or tanneries;
- work associated with animal husbandry, such as milking cows, feeding cattle and cleaning stables/stalls/pens, or work in a silo or storage for storing crops;
- forest firefighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lathe mill, shingle mill, or cooperage stock mill;
- work involving the use of tractors or other moving vehicles, such as industrial trucks, lifts and forklift trucks, forestry machinery, hand-operated motorized tools, rotary cultivators, mowers, fine-slicing machinery or snow blowers;
- work with and maintenance of dangerous machinery, equipment and tools, such as machinery with rapidly moving blades, machinery making stamping movements, machinery with open cylinders or screw blades, mixing, milling, breaking, chopping machinery, skinning machinery, grating machinery and centrifuges, motorized chainsaws and hedge cutters, nail and bolt pistols, machines for cleaning, painting, anti-corrosion or similar treatments;
- work on steam boilers, kilns, ovens or other equipment involving exposure to high temperatures;
- work involving the use of dangerous chemicals, physical or electromagnetic agents, or substances and mixtures of substances which are classified as toxic, very toxic, corrosive or explosive; or exposure to lead or lead compounds, ionizing radiations, asbestos and other materials containing asbestos;
- work that involves the manual handling or transport of heavy loads;
- deep-sea and offshore fishing, charcoal burning, firefighting;
- work as embalmers, work at prisons or mental hospitals, treatment of psychiatric patients and supervision of psychologically or socially disturbed persons, and other similar work;
- work with experimental types of cancer research or work taking place on the same premises as such research work;
- work performed in extreme cold or heat, or including exposure to a high level of noise or vibration, or to high voltage electricity;
- work in bars, hotels or places of entertainment, night work, or overtime work;
- camel or horse jockeying; and
- work which exceeds the physical and mental capacities of children, or work such as commercial sexual exploitation which exposes them to physical, psychological or sexual abuse.

## Legislative gaps in the prohibition of hazardous work

*Prohibiting hazardous work for children under 18 years of age*

546. On the other hand, some countries have not adopted the provisions required to give effect to *Articles 3(d) and 4(1)* of the Convention. Sometimes, the issue lies with the lack of provisions prohibiting hazardous work for children under 18, in which case the Committee has requested the governments concerned to take the necessary measures to ensure that no person under 18 years of age may be authorized to perform hazardous work, in conformity with *Article 3(d)*.<sup>1278</sup>

547. Some member States provide for a minimum age for admission to hazardous work or certain types of hazardous work that is lower than the required 18 years. ***The Committee emphasizes that member States must adopt a general provision prohibiting work that is likely to harm the health, safety or morals of children under 18, in accordance with Convention No. 182.***<sup>1279</sup> Where countries have also adopted legislation providing that certain types of hazardous work are admissible to young persons over 16 years of age, or where they intend to do so, the Committee requests the governments concerned to take measures to ensure that such occupations are only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health, safety and morals of the children concerned are fully protected and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.<sup>1280</sup>

*Determining a list of types of hazardous work*

548. In other instances, member States have not determined or adopted a list of types of hazardous work, as required by *Article 4(1)*.<sup>1281</sup> The Committee calls on the governments concerned to take immediate and effective measures to ensure the adoption of national provisions giving effect to *Article 4(1)* and, in so doing, duly draws their attention to the examples of types of hazardous work enumerated in Paragraph 3 of Recommendation No. 190. Moreover, some countries have adopted the required list determining the types of hazardous work prohibited for children under 18 years of age,

<sup>1278</sup> *Antigua and Barbuda* – CEACR, direct request, 2011; *Bahrain* – CEACR, observation, 2011; *Djibouti* – CEACR, direct request, 2009; *Dominica* – CEACR, direct request, 2010; *Mexico* – CEACR, direct request, 2011; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2010.

<sup>1279</sup> See, for example, *Equatorial Guinea* – CEACR, direct request, 2007; *Nepal* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Sudan* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, direct request, 2010. See also the legislation of the states of Victoria and Tasmania in *Australia* – CEACR, direct request, 2011. Furthermore, in its report supplied under art. 19 of the ILO Constitution, the Government of India indicated that while the minimum age for admission to hazardous work is 14 years, the issue of raising this minimum age to 18 years is currently under consideration.

<sup>1280</sup> See, for example, *Mexico* – CEACR, direct request, 2011; and the legislation of the state of Queensland in *Australia* – CEACR, direct request, 2011.

<sup>1281</sup> See, for example, *Angola* – CEACR, observation, 2011; *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Cape Verde* – CEACR, direct request, 2011; *Central African Republic* – CEACR, direct request, 2011; *Equatorial Guinea* – CEACR, direct request, 2007; *Grenada* – CEACR, direct request, 2009; *Iraq* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; *Trinidad and Tobago* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Seychelles* – CEACR, direct request, 2008; *Swaziland* – CEACR, direct request, 2010; *Uganda* – CEACR, direct request, 2008; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2011.

but these lists were adopted years or even decades earlier,<sup>1282</sup> or do not contain all the types of hazardous work which are relevant to the country's national circumstances.<sup>1283</sup> In these instances, the Committee reminds the governments concerned that, under *Article 4(3)* of the Convention, the list of types of hazardous work which have been determined must be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.<sup>1284</sup>

### *Gaps in legislative coverage of hazardous work*

549. The Committee has also observed that children can be engaged to perform hazardous tasks and occupations in some sectors that are not, at first sight, necessarily dangerous. This can be due to a lack of resources or to the fact that some sectors in which children perform hazardous work are more difficult to monitor, particularly when they are specifically excluded from the application of the labour legislation.<sup>1285</sup> In this regard, certain sectors of the economy are more problematic than others.

### *Hazardous work in the informal economy*

550. The Committee has observed cases where the legislation is not comprehensive enough to protect all children from becoming engaged in work that is dangerous to their health, safety and morals. This is particularly true for self-employed children or children working in the informal economy, as national legislation often fails to cover children properly who perform hazardous work outside a labour relationship or contract.<sup>1286</sup>

551. ***The Committee is of the firm view that governments should take measures to ensure the protection of self-employed children or those working in the informal economy from hazardous work.*** This could be envisaged by extending the scope of the national legislation to children working in the informal economy. For instance, in *Mongolia*, having previously noted that the scope of application of the Labour Code was limited to persons who work for an employer under a contract of employment, the Committee subsequently noted with interest that a list of types of prohibited work for minors was adopted, following consultation with workers' and employers' organizations, which contains 39 jobs and services, seven labour conditions and 53 working positions in 11 economic sectors in both the formal and informal sectors.<sup>1287</sup>

<sup>1282</sup> See, for example, *Cameroon* – CEACR, direct request, 2011; *Congo* – CEACR, direct request, 2009; *France* – CEACR, direct request, 2011; *Libya* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2005; and *Zimbabwe* – CEACR, direct request, 2011.

<sup>1283</sup> For example, in the *United States* – CEACR, observation, 2010, the Committee requested the Government to take immediate measures to ensure that the recommendations of the National Institute for Occupational Safety and Health for changing the existing Hazardous Orders (HOs) are followed up on and that the amendments to the HOs are effectively adopted pursuant to these recommendations as a matter of urgency, in particular with regard to the agricultural HOs, as hazardous child labour in agriculture is of particular concern in that country.

<sup>1284</sup> In *Morocco* – CEACR, observation, 2011, for example, the Committee has noted with interest the adoption and validation, in April 2010, of the decree applying the Labour Code promulgated by the Royal Decree of 24 December 2004 determining the list of hazardous types of work prohibited for children under 18 years of age, which increases the number of hazardous types of work from ten to 30.

<sup>1285</sup> For examples of categories of workers excluded from labour legislation, see *Saudi Arabia* – CEACR, observation, 2010; and *Turkey* – CEACR, direct request, 2011.

<sup>1286</sup> The most recent examples include *Algeria* – CEACR, direct request, 2011; *Bahrain* – CEACR, observation, 2011; *Botswana* – CEACR, direct request, 2011; *Cape Verde* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2010; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; *New Zealand* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; *Rwanda* – CEACR, direct request, 2011; *Slovenia* – CEACR, direct request, 2010; and *Suriname* – CEACR, direct request, 2010.

<sup>1287</sup> *Mongolia* – CEACR, direct request, 2010.

552. Alternatively, governments could consider the possibility of assigning special powers to labour inspectors with regard to children engaged in economic activity on their own account, thereby securing for all children the protection against hazardous work afforded by the Convention. In *Poland*, for instance, the Polish National Labour Inspectorate's scope of activity includes supervision and inspection of working conditions for individuals performing work on a basis other than an employment relationship, and persons engaged in economic activity on their own account, in a place specified by the person for whom such work is performed.<sup>1288</sup>

## Hazardous work in the domestic sector

### *Domestic work as a hazardous form of child labour*

553. The Committee considers that child domestic workers constitute a high-risk group who are outside the normal reach of labour controls and are scattered and isolated in the households in which they work. This isolation, together with the children's dependency on their employers, lays the ground for potential abuse and exploitation. In many cases, the long hours, low or no wages, poor food, overwork and hazards implicit in the working conditions affect the children's physical health.<sup>1289</sup> In this regard, some countries have taken measures to protect child domestic workers from hazardous work. For instance, in *Costa Rica*, the Committee, having noted that nearly 6 per cent of the 113,500 working children were employed in domestic work, noted with interest the adoption of Act No. 8842 of 2010, which provides that domestic work by children aged between 15 and 18 years is prohibited under the following conditions: (i) if the young person must sleep at the workplace; (ii) if the work requires the young person to look after children, elderly persons or persons with disabilities; and (iii) if the work consists of supervision.<sup>1290</sup>

**554. *However, a considerable number of children are still engaged in exploitative domestic work in many countries.***<sup>1291</sup> ***According to IPEC-SIMPOC, as of 2008, 15,525,000 children aged 5–17 were employed in domestic work.***<sup>1292</sup> ***The Committee strongly emphasizes that the governments concerned should take the necessary measures to ensure that children engaged as domestic workers do not perform hazardous work or are not exposed to hazardous working conditions. This could***

<sup>1288</sup> *Poland* – CEACR, direct request, 2010.

<sup>1289</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2011; and *Togo* – CEACR, observation, 2011.

<sup>1290</sup> *Costa Rica* – CEACR, observation, 2011. See also *Nicaragua* – CEACR, observation, 2010.

<sup>1291</sup> For example, in *Indonesia* – CEACR, observation, 2011, the Committee observed with serious concern that approximately 35 per cent of domestic workers are under the age of 18, and that 81 per cent of domestic workers work 11 hours or more a day, and being invisible and hidden from public scrutiny, these workers are prone to becoming victims of exploitation and abuse, such as mental abuse, physical violence or sexual harassment or abuse while at work. Similarly, in *Haiti* – CEACR, observation, 2011, thousands of *restavek* children are often exploited under hazardous conditions. Some of them, only 4 or 5 years old, are the victims of exploitation, are obliged to work long hours without pay, face all kinds of discrimination and bullying, receive poor lodging and food and are often subjected to physical, psychological and sexual abuse. The number of *restavek* children is between 150,000 and 500,000, which represents about one in ten children in *Haiti*. See also *Bangladesh* – CEACR, observation, 2011; *Benin* – CEACR, direct request, 2011; *Brazil* – CEACR, observation, 2010; *China* – CEACR, direct request, 2011; *Colombia* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; *Peru* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2010; and *Togo* – CEACR, observation, 2011.

<sup>1292</sup> See *Domestic work: Policy brief: Global and regional estimates on domestic workers* (Geneva, ILO, 2011), p. 9.

*include the possibility of strengthening the capacity, or expanding the reach of the labour inspectorate with a view to ensuring that children under 18 years of age engaged in hazardous domestic work benefit from the protection afforded by the national legislation. Measures should also be taken to ensure the imposition in practice of sufficiently effective and dissuasive penalties on persons who subject children under 18 years of age to hazardous work.*

*Taking into account the special situation of girls*

555. The Committee also emphasizes that member States must take into account the special situation of girls involved in certain types of hazardous work where they are more vulnerable to exploitation. This is particularly the case in countries where an important number of girls are engaged in exploitative domestic work.<sup>1293</sup> The Committee requests the governments concerned to take effective and time-bound measures that pay particular attention to the situation of girls working in these areas. In *Mexico*, for instance, the Committee observed that over 80 per cent of girls between the ages of 12 and 17 years were engaged in some economic activity, particularly in domestic service, and that in particular young girls engaged in domestic work are often the victims of exploitation.<sup>1294</sup> In this regard, the Committee noted that the *Oportunidades* programme in rural areas contributed, inter alia, to reducing by 9.1 per cent the probability of girls between 15 and 17 years from becoming domestic workers.

Hazardous work in the agricultural sector

556. According to the 2010 Global Report, 60 per cent of child labourers aged 5 to 17 years are in agriculture.<sup>1295</sup> Indeed, the Committee has observed many cases where children are widely engaged in hazardous work in the agricultural sector.<sup>1296</sup> The Committee urges governments which experience a widespread problem of children engaged in hazardous work in agriculture to take the necessary measures to ensure the effective enforcement of their legislation, including through the strengthening of labour inspectorate capacities, the imposition in practice of sufficiently effective and dissuasive penalties through thorough investigations and robust prosecutions, and the implementation of effective and time-bound measures.

**557. Furthermore, although it is generally left to the discretion of member States to determine the types of hazardous work which are prohibited for children, the Committee has noted cases in which children are, in practice, engaged in work that, while not prohibited, is clearly hazardous.<sup>1297</sup> This has been observed particularly in**

<sup>1293</sup> See, for example, *Central African Republic* – CEACR, direct request, 2011; *Equatorial Guinea* – CEACR, direct request, 2007; *Ethiopia* – CEACR, direct request, 2010; *Honduras* – CEACR, observation, 2009; *Lesotho* – CEACR, observation, 2011; *Mali* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2010; *Morocco* – CEACR, observation, 2011; and *Paraguay* – CEACR, observation, 2011.

<sup>1294</sup> *Mexico* – CEACR, direct request, 2010.

<sup>1295</sup> *Accelerating action against child labour*, op. cit., para. 34.

<sup>1296</sup> For example, in *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2007; and *Nigeria* – CEACR, direct request, 2006, an important number of child workers perform hazardous work in the agricultural sector, and more specifically in cocoa plantations. See also *Democratic Republic of the Congo* – CEACR, observation, 2011; *Egypt* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, observation, 2011; *Nicaragua* – CEACR, observation, 2010; *Thailand* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, observation, 2011.

<sup>1297</sup> Such is the case in *Mongolia* – CEACR, direct request, 2010, where the Committee considered that children engaged as jockeys in horse racing perform work that, by its nature and the extremely hazardous conditions in which it is performed, is likely to harm their health and safety.

*the agricultural sector, in cases where the conditions of work are dangerous and the number of injuries and fatalities suffered by children under 18 years of age employed in hazardous types of work are matters of serious concern.*<sup>1298</sup> *In such cases, the Committee has expressed its concern that such occupations, inherently dangerous to the health and safety of children, are not prohibited. The Committee recalls that Paragraph 4 of Recommendation No. 190 addresses the possibility of authorizing the employment or work of young persons as from the age of 16 under strict conditions of protection and prior training, but considers that, in view of the significant number of injuries and fatalities suffered by children in many instances, these conditions are not fully met in all circumstances. The Committee urges the governments concerned to take immediate and effective measures to comply with Articles 1 and 3(d) of the Convention, and to prohibit children under 18 years of age from engaging in hazardous and dangerous work as a matter of urgency. However, where such work is performed by young persons between 16 and 18 years of age, the Committee emphasizes that the governments concerned should take the necessary measures to ensure that such work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190.*

#### *Programmatic measures*

558. With regard to the adoption of effective and time-bound measures, the Committee has observed significant progress in the area of hazardous work. A great number of countries have implemented effective and time-bound measures in order to prevent children from becoming engaged in hazardous work and to remove those who have become engaged and rehabilitate and socially integrate them. Some countries have adopted national action plans or programmes to combat the worst forms of child labour, which target hazardous work in general, or certain problematic types of hazardous work more specifically, in accordance with national circumstances.<sup>1299</sup>

#### *ILO–IPEC collaboration*

##### *ILO–IPEC Time-bound Programmes (TBPs)*

559. Frequently, these time-bound measures have been implemented with ILO–IPEC collaboration. Indeed, ILO–IPEC has assisted many countries with **TBPs** to prioritize certain worst forms of child labour, including certain types of hazardous work, in

<sup>1298</sup> For example, in *New Zealand* – CEACR, observation, 2010, the Committee noted with serious concern that statistics on work-related injuries indicated that in 2006, about 300 children under 15 years of age visited their local doctor for a work-related injury, and that the common location of such injuries is farm work. Moreover, in the same year, accident compensation entitlements and rehabilitation assistance were provided to about ten children under the age of 9; 15 children between the ages of 10 and 14, and between 1,000 and 2,000 children between the ages of 15 and 19. The Committee also expressed serious concern that, in the *United States* – CEACR, observation, 2010, between 300,000 and 800,000 children are employed in agriculture under dangerous conditions. Many work for 12 hours a day and are exposed to dangerous pesticides, suffer rashes, headaches, dizziness, nausea and vomiting, often risking exhaustion or dehydration due to lack of water, and are often injured. The industry that had by far the highest number of fatalities – 162, or 40 per cent – was agriculture, forestry and fishing, even though only 13 per cent of working children under 18 are engaged in this sector. This high rate of fatal injuries was confirmed by the fact that youths of 15–17 years of age working in agriculture appear to have over four times the risk of injury than those working in other industries.

<sup>1299</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Barbados* – CEACR, direct request, 2011; *Bulgaria* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2009; *Cambodia* – CEACR, direct request, 2011; *Ghana* – CEACR, direct request, 2011; *Guyana* – CEACR, direct request, 2007; *Kyrgyzstan* – CEACR, direct request, 2011; *Nepal* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Peru* – CEACR, observation, 2010; *South Africa* – CEACR, direct request, 2010; *Uganda* – CEACR, direct request, 2008; and *Viet Nam* – CEACR, direct request, 2010.

consultation with the social partners.<sup>1300</sup> While some ILO–IPEC projects and programmes are not restricted in scope, covering child labour and its worst forms in general,<sup>1301</sup> others have targeted different forms or sectors of hazardous work, depending on the most pressing issues in each country. For example, in some cases, the **TBPs** have prioritized intervention in sectors where children are particularly at risk of performing hazardous work, such as agricultural work, child domestic labour, child labour in mining and quarrying, trafficking or fishing, or in the urban informal economy.<sup>1302</sup> In other instances, the **TBPs** have targeted more specific sectors of intervention: children involved in household chores or engaged in hazardous work in construction; the tourism or transport industries; banana and flower growing; tobacco, rice or cotton fields; sugar cane, cocoa or rubber plantations; small-scale mining; refuse dumps; the footwear, firework, brick or furniture industries; deep-sea fishing; rag-picking; carpet weaving; domestic service; glass bangle making; surgical instrument manufacturing; tanneries; scavenging; ship-breaking; salt and fishing production; or seafood processing.<sup>1303</sup> In the framework of these **TBPs**, children have been prevented from entering hazardous work in the abovementioned sectors, as well as withdrawn, rehabilitated and socially integrated through a variety of direct actions, such as policy development and enforcement; building the knowledge base, commitment and mobilization; educational measures, skills training and literacy, as well as targeted interventions, such as counselling services, telephone hotlines, legal, medical or psychological consultations, and vocational training.

560. For example, the Committee noted with interest that in the *United Republic of Tanzania*, due to the interventions carried out between 2002–05 under Phase I of the **TBP**, 25 per cent of children involved in the worst forms of child labour were withdrawn, and 20 per cent of those who were at risk of being involved in the worst forms of child labour were prevented from doing so in the four sectors targeted by the **TBP**, namely, prostitution, domestic service, the mining sector and commercial agriculture, including the tea, coffee and tobacco sectors.<sup>1304</sup> Under Phase II of the **TBP** (since 2005), a total of 20,143 children (10,015 boys and 10,128 girls) were withdrawn from or prevented from being engaged in child labour, including hazardous work, through educational services or training opportunities; and 2,375 children (912 boys and 1,463 girls) were withdrawn or prevented from being engaged in child labour through other non-education related services.<sup>1305</sup> Moreover, in *Bangladesh*, under the ILO–IPEC **TBP**, a list of types of hazardous work is being prepared by the Government, which includes eight sectors:

<sup>1300</sup> *Child labour in a globalized world*, op. cit., p. 97.

<sup>1301</sup> See, for example, *Dominican Republic* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2009; *Kazakhstan* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Paraguay* – CEACR, direct request, 2011; *Senegal* – CEACR, direct request, 2011; and *Thailand* – CEACR, direct request, 2011.

<sup>1302</sup> See, for example, *Bangladesh* – CEACR, direct request, 2011; *Ghana* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2010; *Morocco* – CEACR, observation, 2011; *Nicaragua* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2011.

<sup>1303</sup> See, for example, *Burkina Faso* – CEACR, observation, 2009; *Cambodia* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2007; *Ecuador* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2007; *Indonesia* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, direct request, 2011; *Malawi* – CEACR, direct request, 2011; *Pakistan* – CEACR, observation, 2011; *Swaziland* – CEACR, direct request, 2010; *United Republic of Tanzania* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2011.

<sup>1304</sup> *United Republic of Tanzania* – CEACR, direct request, 2008.

<sup>1305</sup> *United Republic of Tanzania* – CEACR, observation, 2010.



bidi making (cigarette rolling), leather and tannery, manufacturing of matches, explosives and fireworks, cement manufacturing, child domestic labour, road transport, ship-breaking and mines.<sup>1306</sup>

### *ILO–IPEC regional projects*

561. ILO–IPEC has also conducted regional programmes to combat certain sectors of hazardous child labour. For instance, the Committee has noted with interest that the *Dominican Republic*, in collaboration with ILO–IPEC, launched the project “Developing a roadmap to make Central America, Panama and the Dominican Republic a child-labour free zone”, which is the strategic national framework to achieve the objectives established in the Decent Work Hemispheric Agenda of eliminating the worst forms of child labour by 2015 and eliminating child labour by 2020.<sup>1307</sup> The Committee also noted the implementation of the ILO–IPEC Project for the Prevention and Elimination of Child Labour in Artisanal Gold Mining in West Africa, involving *Burkina Faso* and *Niger*.<sup>1308</sup> As a result, a programme of action has been implemented in *Niger* to contribute to the establishment of schools and initiatives to promote school attendance on gold mining sites and neighbouring villages, as well as the improvement of school infrastructure on the gold mining sites of M’Banga and Komabangou, resulting in 2,195 children (1,515 girls) being prevented from exploitation in gold mining and integrated into the traditional school system. In *Burkina Faso*, 657 children have been removed from the worst forms of labour in gold washing and have benefited from pre-school and school services, support in the form of school equipment, school clothing and afternoon snacks, and medical care.

### Lack of effective programmatic measures

562. However, the Committee has also noted some instances in which member States have not adopted the necessary measures to combat the use of children in hazardous work in their country.<sup>1309</sup> In these cases, the Committee requests the Governments concerned to take effective and time-bound measures to remove children from the worst forms of child labour in question and to ensure their rehabilitation and social integration, especially in sectors of work where hazardous child labour is more prevalent. Indeed, in view of the success experienced by member States with regard to the implementation of programmatic measures in the field of hazardous work, the Committee considers that concrete action to combat this worst form of child labour is a crucial element to its successful eradication and must imperatively be undertaken in conjunction with the adoption of legislative measures.

### Access to free basic education

563. The UNESCO: *Education for All Global Monitoring Report 2011* points to the rapid progress made towards the goal of universal primary education in the last decade. According to this report, the number of children enrolled in primary school increased by 52 million from 1999 to 2008. However, the report highlights that 67 million children

<sup>1306</sup> *Bangladesh* – CEACR, direct requests, 2009 and 2011.

<sup>1307</sup> *Dominican Republic* – CEACR, direct request, 2011. See also *Panama* – CEACR, direct request, 2011.

<sup>1308</sup> *Burkina Faso* – CEACR, observation, 2009; and *Niger* – CEACR, observation, 2011.

<sup>1309</sup> See, for example, *Chad* – CEACR, direct request, 2010; *Comoros* – CEACR, direct request, 2010; and *Grenada* – CEACR, direct request, 2009.

were still out of school in 2008 and, because the rate of progress has been slowing in recent years, there could be an increase of 5 million out of school children by 2015.<sup>1310</sup>

564. Under *Article 7(2), clause (a)*, of the Convention, member States shall take effective and time-bound measures to prevent the engagement of children in the worst forms of child labour, taking into account the importance of education. *Article 7(2), clause (c)*, of the Convention also requires that member States shall take effective and time-bound measures to ensure access to free basic education for all children removed from the worst forms of child labour as a means of contributing to their rehabilitation and social integration.

### *Evolution in enrolment and attendance rates in basic education*

#### Increasing school attendance rates

565. On several occasions, the Committee has observed that member States have taken measures in recent years that have led to increased school attendance rates in both primary and secondary education.<sup>1311</sup> For example, in *Zambia*, the primary net enrolment rates increased by more than 20 per cent between 1999 and 2005.<sup>1312</sup>

566. To address the issue of low enrolment rates in basic education, some governments have taken legal measures which establish penalties for any parents who fail to comply with the compulsory school attendance of their child.<sup>1313</sup> Moreover, the Committee has noted with satisfaction the adoption of an Act on domestic work in *Nicaragua* which prescribes the obligation of employers to promote and facilitate the education of their young domestic workers.<sup>1314</sup>

567. However, in many countries, enrolment and attendance rates remain particularly low and, in some cases, are below or equal to 40 per cent in primary education and 15 per cent in secondary education.<sup>1315</sup> In a few cases, they have even decreased, sometimes substantially, over the last few years.<sup>1316</sup>

<sup>1310</sup> UNESCO: *Education for All Global Monitoring Report 2011: The hidden crisis: Armed conflict and education* (Paris, 2011), p. 40.

<sup>1311</sup> See, for example, *Cambodia* – CEACR, direct request, 2009; *Djibouti* – CEACR, direct request, 2009; and *Kenya* – CEACR, direct request, 2009.

<sup>1312</sup> See *Zambia* – CEACR, direct request, 2010.

<sup>1313</sup> See, for example, *South Africa* – CEACR, direct request, 2010.

<sup>1314</sup> See *Nicaragua* – CEACR, observation, 2010.

<sup>1315</sup> For example, in *Chad*, the Committee has expressed serious concern at the low net school attendance rate, at both the primary and secondary levels, which were, respectively, 41 per cent for boys and 31 per cent for girls in primary school, and 13 per cent for boys and 7 per cent for girls in secondary education in 2006. See *Chad* – CEACR, direct request, 2010. In *Comoros*, the Committee has expressed concern at the low school attendance rate at both the primary and secondary levels which were, respectively, 31 per cent for both boys and girls in primary school, and 10 per cent for boys and 11 per cent for girls in secondary education in 2007. See *Comoros* – CEACR, direct request, 2010.

<sup>1316</sup> See, for example, *Fiji* – CEACR, direct request, 2010; *Liberia* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

### Reducing the gap between the school attendance rates in primary and secondary education

568. In other countries, the secondary school attendance rate remains low in comparison with attendance rates at the primary level, even though children of the age of secondary education have often not yet reached the age for admission to employment or work.<sup>1317</sup> Therefore, the Committee has repeatedly underlined the importance of taking measures to increase attendance rates in secondary education.<sup>1318</sup>

### Decreasing school drop-out rates

569. The Committee has furthermore often observed that one of the reasons that contributes to low school attendance rates is that many children drop out of school before completing basic education. Indeed, many countries face massive challenges in retaining students through a complete basic education school cycle.<sup>1319</sup> A small number of countries have taken measures in this regard, such as *Egypt*, where the National Council for Children and Motherhood (NCCM) has been providing families of working minors with alternative sources of income to reduce school drop-out rates since 2008.<sup>1320</sup> High school drop-out rates are partly linked to the poor quality of education, as the curriculum does not always prepare children adequately for gainful skilled employment. For instance, according to the report of the high-level fact-finding mission which visited *Niger* in 2006, parents hesitate to send their children to school when they see that such education affords no guarantee of a job.<sup>1321</sup> Child labour also contributes heavily to this trend: working children frequently drop out from school because they are unable to combine work and study.<sup>1322</sup> In this respect, according to a study which examines the negative relationship between child labour and school enrolment in *Senegal*, one child in four drops out of school in the 7–14 age group owing to premature entry into the labour market, which is the primary cause of school drop-out.<sup>1323</sup>

570. The Committee considers that high school retention rates contribute to preventing and combating the engagement of children in the worst forms of child labour. It therefore stresses the need to improve the functioning of the educational system through measures that aim in particular to increase school attendance rates and reduce school drop-out rates.

<sup>1317</sup> For example, in *Haiti*, the Committee noted that the net attendance rate in primary education was 48 per cent for boys and 52 per cent for girls, while it was barely 18 per cent for boys and 21 per cent for girls in secondary education in 2008. See *Haiti* – CEACR, direct request, 2011.

<sup>1318</sup> See, for example, *Costa Rica* – CEACR, direct request, 2011; *Gabon* – CEACR, observation, 2011; and *Portugal* – CEACR, direct request, 2011.

<sup>1319</sup> See, for example, *Indonesia* – CEACR, direct request, 2010; *Jordan* – CEACR, direct request, 2011; and *Tajikistan* – CEACR, direct request, 2011.

<sup>1320</sup> See *Egypt* – CEACR, direct request, 2011.

<sup>1321</sup> See *Niger* – CEACR, observation, 2011.

<sup>1322</sup> See, for example, *Jamaica* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2010; and *Mozambique* – CEACR, observation, 2010.

<sup>1323</sup> See *Senegal* – CEACR, direct request, 2011.

*Overcoming major barriers to free basic education**Ensuring access to free basic education*

571. A positive trend emerging from the Committee's comments is that a considerable number of member States have made basic education free and generally accessible.<sup>1324</sup> Free basic education contributes to improving enrolment and attendance rates as tuition fees and other costs are viewed as a barrier for many children to receive basic education, especially when families are obliged to choose between the education of their children and an additional income for the family due to poverty.<sup>1325</sup> In this regard, a rapid assessment survey identifying the worst forms of child labour in *Zimbabwe*, conducted in September 2008, indicated that 48 per cent of the children surveyed who had dropped out of school had done so because their parents could not pay for school fees and 59 per cent of the children who had never attended school said that this was due to financial reasons.<sup>1326</sup>

572. In addition, while tuition fees for basic education may be provided free of charge, parents of students are often required to pay other fees, such as books, uniforms, transport and supplies (hidden costs).<sup>1327</sup> In this regard, some member States have taken corrective measures to make access to basic education more affordable. These measures can be classified into two different categories.

*Unconditional cash transfer programmes*

573. Many countries have implemented grant schemes, such as scholarship programmes, to enable children to have more equal opportunities to access and complete basic education.<sup>1328</sup> For example, 5.3 million education grants were provided by the Government of *Mexico* during the school year 2007–08. As a result, the school completion rate of children who have received education grants has increased by 1.79 per cent more than the previous school years.<sup>1329</sup> Similarly, the Government of *Ghana* has initiated a capitation grant scheme and a school feeding programme and has introduced free transport, books and school uniforms for children, the provision of classrooms, as well as allowances for teachers in deprived communities. The Committee subsequently noted with interest that, according to the National Report on the Development of Education in Ghana of September 2008, the Capitation Grant Scheme has contributed to a rise in school enrolment rates of an additional 616,439 pupils (295,114 boys and 321,325 girls) in comparison with the 2004–05 enrolment rates.<sup>1330</sup>

<sup>1324</sup> See, for example, *Latvia* – CEACR, direct request, 2010; *Libya* – CEACR, direct request, 2006; and *United Arab Emirates* – CEACR, direct request, 2006.

<sup>1325</sup> For example, in *Mexico*, 1.7 million children of school age are unable to receive education as poverty makes it imperative for them to work. See *Mexico* – CEACR, observation, 2011.

<sup>1326</sup> See *Zimbabwe* – CEACR, observation, 2011.

<sup>1327</sup> See, for example, *Albania* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; and *Namibia* – CEACR, direct request, 2010.

<sup>1328</sup> See, for example, *Belize* – CEACR, direct request, 2006; *Nicaragua* – CEACR, direct request, 2010; and *Sao Tome and Principe* – CEACR, direct request, 2011.

<sup>1329</sup> See *Mexico* – CEACR, observation, 2011.

<sup>1330</sup> See *Ghana* – CEACR, direct request, 2011.

### *Conditional cash transfer programmes*

574. Other countries have implemented conditional cash transfer programmes (CCTs) which are aimed at helping families in situations of extreme poverty by providing them with financial allowances subject to the condition that the children of beneficiary families attend school.<sup>1331</sup> For example, the Government of *Brazil* has introduced an income transfer programme entitled “Programme for the Elimination of Child Labour (PETI)” which consists of a monthly grant (called the child-citizen grant – *Bolsa Criança-Cidadã*) to families of children aged 7–15 years which is conditional on their attendance at school.<sup>1332</sup>

575. However, there remain a large number of countries where basic education is still not free.<sup>1333</sup> The Committee is of the view that access to free basic education is one of the most effective means of combating the worst forms of child labour and emphasizes the need to take effective and time-bound measures to facilitate access to free basic education, particularly for children from poor and disadvantaged families.

### Improving the general functioning of the education system

576. A large majority of countries have adopted and implemented national education programmes of action<sup>1334</sup> and Education for All (EFA) national plans<sup>1335</sup> in collaboration with UNESCO to improve the general functioning of the education system. Many member States have also included access to free basic education for all children as one of the objectives of several national action programmes.<sup>1336</sup> Depending on the situation of the country, these programmes and plans target different objectives. For example, the Government of *Uganda* has implemented a universal programme for free secondary education to ensure that children do not stop their schooling after primary education,<sup>1337</sup> while others, such as *Benin*, plan to support formal and informal education.<sup>1338</sup>

### Putting an end to discrimination and disparities in educational opportunities

#### *Achieving gender parity*

577. Certain countries have taken specific measures to achieve gender parity and have made enormous progress in this regard in recent years. For example, some countries, such as *Burkina Faso*, have taken measures to encourage the school attendance of girls

<sup>1331</sup> See, for example, *Colombia* – CEACR, observation, 2011; *Lebanon* – CEACR, direct request, 2010; and *Panama* – CEACR, direct request, 2011.

<sup>1332</sup> See *Brazil* – CEACR, direct request, 2005.

<sup>1333</sup> See, for example, *Cape Verde* – CEACR, direct request, 2011.

<sup>1334</sup> See, for example, *Guatemala* – CEACR, direct request, 2009; *Morocco* – CEACR, direct request, 2011; and *Togo* – CEACR, direct request, 2011.

<sup>1335</sup> See, for example, *Cambodia* – CEACR, direct request, 2008; *Central African Republic* – CEACR, direct request, 2010; and *Haiti* – CEACR, direct request, 2011.

<sup>1336</sup> See, for example, *Algeria* – CEACR, direct request, 2009; *Slovenia* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2010.

<sup>1337</sup> See *Uganda* – CEACR, direct request, 2008.

<sup>1338</sup> See, for example, *Benin* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; and *Nicaragua* – CEACR, direct request, 2011.

and, as a result, will probably achieve gender parity in education by 2015.<sup>1339</sup> In *Egypt*, among the initiatives taken to reduce the gender gap in both primary and secondary education, 77 girl-friendly schools have been established, as well as one-class schools to enable female drops-outs to complete their education. Furthermore, the Government is attempting to increase the number of girls' schools in the countryside in response to parents from rural areas who do not want to send their daughters to co-educational schools.<sup>1340</sup> The Committee has also noted with interest that since 2008 in *Togo*, school fees have been made free for pre-school and primary school, and are reduced for girls in secondary education in public establishments.<sup>1341</sup>

578. However, although the gender parity index in both primary and secondary education is on the rise in several countries, they are still at risk of not achieving the gender parity goal by 2015.<sup>1342</sup> In many countries, girls still face a severe disadvantage in accessing education.<sup>1343</sup> The factors that impede girls' educational opportunities range from the types of work they perform, such as domestic servitude or home-based work, to cultural and poverty constraints. Poor families often prefer to invest in the education of their sons, based on the assumption that boys are more likely to bring in monetary income. Moreover, girls are sometimes victims of harassment and sexual abuse in school, which leads to the refusal of some girls to go to school.<sup>1344</sup> However, it should also be noted that in a few instances, the Committee has observed the opposite trend, namely that gender parity has not been achieved with regard to boys.<sup>1345</sup>

579. The Committee therefore emphasizes the necessity of adopting and implementing measures aimed at achieving gender parity in both primary and secondary education.

#### *Ensuring equal access to free basic education for vulnerable children*

580. Gender discrimination is not the only cause of disparity in education. Many children, such as the children of indigenous families or ethnic minorities,<sup>1346</sup> poor families,<sup>1347</sup> migrant, refugee or displaced children<sup>1348</sup> and children in remote or rural areas<sup>1349</sup> have limited access to education for several reasons, including the non-existence or lack of provision of bilingual education, poverty, social exclusion or racial discrimination. Among the various measures taken by member States to reduce disparities between different groups of children, the Committee has observed that a new

<sup>1339</sup> See *Burkina Faso* – CEACR, direct request, 2011.

<sup>1340</sup> See *Egypt* – CEACR, observation, 2011.

<sup>1341</sup> See *Togo* – CEACR, direct request, 2011.

<sup>1342</sup> See, for example, *Egypt* – CEACR, observation, 2011; and *Niger* – CEACR, observation, 2011.

<sup>1343</sup> See, for example, *Iraq* – CEACR, direct request, 2011; and *Yemen* – CEACR, direct request, 2010.

<sup>1344</sup> See, for example, *Mozambique* – CEACR, observation, 2010.

<sup>1345</sup> See, for example, *Brazil* – CEACR, direct request, 2010; *Dominica* – CEACR, direct request, 2010; and *Saint Lucia* – CEACR, direct request, 2010.

<sup>1346</sup> See, for example, *Ecuador* – CEACR, direct request, 2011; *Hungary* – CEACR, direct request, 2011; and *Peru* – CEACR, direct request, 2010.

<sup>1347</sup> See, for example, *Philippines* – CEACR, direct request, 2010; *Togo* – CEACR, direct request, 2011; and *Turkey* – CEACR, direct request, 2011.

<sup>1348</sup> See, for example, *Azerbaijan* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; and *Sudan* – CEACR, direct request, 2009.

<sup>1349</sup> See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *China* – CEACR, direct request, 2006; and *Senegal* – CEACR, direct request, 2011.

system of prohibiting the charging of fees in schools in the poorest quintile of areas was introduced in *South Africa* in 2007.<sup>1350</sup> In *Kuwait*, an order specifying that children who do not have Kuwaiti nationality shall be treated as Kuwaiti citizens with respect to free and compulsory education has been adopted and a fund totalling 4 million Kuwaiti dinars (approximately US\$14 million) has been set up especially for the education of these children, benefiting 15,730 students in 2006 and 2007.<sup>1351</sup> The Committee also noted with interest that *New Zealand* has introduced an amendment to the Immigration Act, under which illegal migrant children can apply for a Limited Purpose Permit which will allow them to enrol at primary and secondary schools.<sup>1352</sup>

581. However, on a number of occasions, the Committee has expressed its concern that children from several vulnerable groups still experience great difficulty in gaining access to education and complete schooling.<sup>1353</sup> For example, in certain regions and areas, the school attendance rate of vulnerable children is barely half the national rate.<sup>1354</sup> Moreover, insufficient budgetary allocations and the lack of schools and trained teachers, particularly in remote and poor areas, still impede access to education in some countries.<sup>1355</sup>

582. The Committee therefore emphasizes the importance of taking measures to facilitate equal access to education for these vulnerable children in view of the fact that such children are at a greater risk of being engaged in the worst forms of child labour and that access to free basic education contributes to preventing children from being engaged in such activities.

*Ensuring access to free basic education and vocational training  
for children removed from the worst forms of child labour*

583. Providing educational services and other training opportunities for children withdrawn from child labour is a component of numerous ILO–IPEC programmes and projects such as “Tackle child labour through education”, launched in 2004 in 11 countries across Africa, the Caribbean and the Pacific: *Angola, Fiji, Guyana, Jamaica, Kenya, Madagascar, Mali, Papua New Guinea, Sierra Leone, Sudan and Zambia*.<sup>1356</sup> Most national *TBPs* also provide educational services and other training opportunities for children withdrawn from the worst forms of child labour.<sup>1357</sup> Similarly, educational measures are often part of a series of measures taken under the various national programmes of action adopted by member States to eliminate specific forms of child labour.<sup>1358</sup>

<sup>1350</sup> See *South Africa* – CEACR, direct request, 2010.

<sup>1351</sup> See *Kuwait* – CEACR, direct request, 2010.

<sup>1352</sup> See *New Zealand* – CEACR, direct request, 2010.

<sup>1353</sup> See, for example, *Angola* – CEACR, observation, 2011; and *Guatemala* – CEACR, direct request, 2009.

<sup>1354</sup> See, for example, *Nigeria* – CEACR, direct request, 2006.

<sup>1355</sup> See, for example, *Angola* – CEACR, observation, 2011; *Gambia* – CEACR, direct request, 2011; and *Pakistan* – CEACR, direct request, 2010.

<sup>1356</sup> See *Angola* – CEACR, direct request, 2011; *Fiji* – CEACR, direct request, 2011; *Jamaica* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2011; *Mali* – CEACR, observation, 2010; and *Papua New Guinea* – CEACR, direct request, 2011.

<sup>1357</sup> See, for example, *Bangladesh* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2009; and *Philippines* – CEACR, direct request, 2010.

<sup>1358</sup> See, for example, *Bangladesh* – CEACR, direct request, 2011.

584. In the context of these programmes and projects, a substantial number of children removed from the worst forms of child labour have been rehabilitated through formal or non-formal education and vocational training opportunities.<sup>1359</sup> For example, the Committee noted with interest that, following the adoption by the *Plurinational State of Bolivia* of educational measures provided to children working in mines, 20 per cent of the children who participated in the programme have stopped working.<sup>1360</sup> It also noted with interest that *Nicaragua* has implemented a programme, the *Programa Amor*, which aims to restore the rights of 25,000 street children and young persons, who are very vulnerable to commercial sexual exploitation, and that the Government has set the objectives of integrating all children into the education system and ensuring that they receive social benefits by 2011.<sup>1361</sup>

585. In certain countries, child victims of a particular form of child labour also receive education in specialized schools, such as schools for former camel jockeys in *Mauritania* or for child victims of armed conflict in *Uganda*.<sup>1362</sup>

586. Moreover, a number of governments have developed non-formal education programmes or projects to make education accessible to children of different ages who are not in school, or who have dropped out of the early stages of basic education.<sup>1363</sup>

587. The Committee has nonetheless noted that a non-negligible number of countries have not taken sufficient measures to reintegrate children removed from the worst forms of child labour back into the educational system.<sup>1364</sup> The Committee is of the view that education and training are essential to ensure the rehabilitation and social integration of children removed from the worst forms of child labour. It therefore emphasizes the need to provide child victims of the worst forms of child labour with access to free education and vocational training.

**588. *Where it observes that the education system is not sufficiently efficient to ensure access to free basic education for all children, the Committee urges governments to strengthen the functioning of the education system, take effective and time-bound measures to increase school attendance rates and reduce drop-out rates, facilitate access to free basic education at both primary and secondary levels, provide informal education opportunities and vocational training for children who are not enrolled in formal schooling and pay particular attention to girls and vulnerable children, that is, for example, children living in rural areas, children from poor families, indigenous children and migrant children.***

## Identifying and reaching out to children at special risk

589. The Convention, in *Article 7(2)(d)*, recognizes that effectively combating the worst forms of child labour means identifying and reaching out to children who are particularly vulnerable to these worst forms of child labour. In this regard, the Committee has noted that certain groups of children are particularly vulnerable to the worst forms of labour, due to various social and economic factors, which vary across States and regions. These

<sup>1359</sup> See, for example, *Madagascar* – CEACR, direct request, 2010; *Mexico* – CEACR, observation, 2011; and *Nepal* – CEACR, direct request, 2008.

<sup>1360</sup> See *Plurinational State of Bolivia* – CEACR, observation, 2009.

<sup>1361</sup> See *Nicaragua* – CEACR, observation, 2010.

<sup>1362</sup> See *Mauritania* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2008.

<sup>1363</sup> See, for example, *Kenya* – CEACR, direct request, 2010; and *Haiti* – CEACR, direct request, 2011.

<sup>1364</sup> See, for example, *Zimbabwe* – CEACR, observation, 2011.



groups are not explicitly identified in the Convention, and as such children often belong to marginalized or isolated groups, they may not be reached through standard channels and institutions.

*HIV and AIDS orphans and other vulnerable children*

590. *The Committee observes that HIV and AIDS orphans and other vulnerable children (OVCs) are particularly at risk of engagement in the worst forms of child labour. These children are often left without sufficient family support, and must engage in economic activity to support themselves,<sup>1365</sup> or in the case of child-headed households (a growing phenomenon in several member States), their siblings.<sup>1366</sup> OVCs usually have very limited means of generating income and therefore resort to risky coping strategies.<sup>1367</sup> The growing population of OVCs in many countries has therefore resulted in a growing number of persons under the age of 18 who are particularly vulnerable to becoming victims of trafficking and commercial sexual exploitation, or being used in illicit activities and hazardous work.<sup>1368</sup> In this regard, the Committee emphasizes that effective and time-bound measures tailored to the circumstances and needs of OVCs are essential in combating the worst forms of child labour.*

Specific national plans of action for OVCs

591. The Committee has noted the formulation and implementation of specific national plans of action for OVCs in many countries, particularly on the African continent, including *Angola, Benin, Cameroon, Côte d'Ivoire, Malawi, Mozambique, Namibia, Rwanda, South Africa* and *Zimbabwe*.<sup>1369</sup> Non-African countries which have implemented specific national plans of action for OVCs include *Guyana* and *Papua New Guinea*.<sup>1370</sup> These national plans of action commonly aim to provide a wide range of support to OVCs, including access to educational and health services,<sup>1371</sup> nutritional and food assistance<sup>1372</sup> and psychological services,<sup>1373</sup> in addition to strengthening institutional capacity to respond to the needs of OVCs, including stronger social protection.<sup>1374</sup> Direct financial support may be provided to vulnerable OVCs through

<sup>1365</sup> See, for example, *Mozambique* – CEACR, observation, 2010; *Uganda* – CEACR, direct request, 2008; and *Zimbabwe* – CEACR, direct request, 2008.

<sup>1366</sup> See, for example, *Lesotho* – CEACR, direct request, 2006; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1367</sup> See, for example, *Botswana* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; and *United Republic of Tanzania* – CEACR, observation, 2010.

<sup>1368</sup> See, for example, *Cameroon* – CEACR, observation, 2011; *Congo* – CEACR, direct request, 2009; *Djibouti* – CEACR, direct request, 2010; *Equatorial Guinea* – CEACR, direct request, 2007; *Guyana* – CEACR, direct request, 2007; *Papua New Guinea* – CEACR, direct request, 2011; *Swaziland* – CEACR, direct request, 2006; *Togo* – CEACR, direct request, 2011; *Uganda* – CEACR, direct request, 2008; and *Zambia* – CEACR, observation, 2010.

<sup>1369</sup> *Angola* – CEACR, observation, 2011; *Benin* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, direct request, 2011; *Malawi* – CEACR, direct request, 2007; *Mozambique* – CEACR, observation, 2010; *Namibia* – CEACR, direct request, 2010; *Rwanda* – CEACR, direct request, 2008; *South Africa* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1370</sup> *Guyana* – CEACR, direct request, 2007; and *Papua New Guinea* – CEACR, direct request, 2009.

<sup>1371</sup> See, for example, *Ghana* – CEACR, direct request, 2009; and *Kenya* – CEACR, direct request, 2010.

<sup>1372</sup> See, for example, *Botswana* – CEACR, direct request, 2010; *Burkina Faso* – CEACR, direct request, 2011; and *Gabon* – CEACR, direct request, 2009.

<sup>1373</sup> See, for example, *Botswana* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2010; and *Zambia* – CEACR, observation, 2010.

<sup>1374</sup> *Angola* – CEACR, observation, 2011; and *Malawi* – CEACR, direct request, 2011.

CCTs, which work to prevent children from entering the labour market, thereby reducing their risk of becoming engaged in the worst forms of child labour.<sup>1375</sup> For example, the Child Grants Programme was launched in 2009 in *Lesotho* and provides quarterly unconditional payments to OVC children.<sup>1376</sup> However, despite such efforts, in many member States these social services and support mechanisms only reach a fraction of the OVCs in the country,<sup>1377</sup> or remain insufficient to address the needs of this vulnerable group.<sup>1378</sup> In this regard, the Committee considers that the governments concerned need to take concrete measures to increase the percentage of households with OVCs receiving support services and grants in order to protect such children from the worst forms of child labour.

#### Facilitating access to education or vocational training for OVCs to prevent their engagement in the worst forms of child labour

592. The Committee observes that access to education is a particular problem facing many OVC populations.<sup>1379</sup> Children in HIV and AIDS-affected families are often withdrawn from school at a young age to care for ill family members or siblings, and to supplement the income of sick parents. In many countries, HIV and AIDS orphans are much less likely to be enrolled and attending school than non-orphan children.<sup>1380</sup> However, several member States have taken positive measures to facilitate access to education for OVCs, including *Senegal*, where the implementation of a programme to support schooling and vocational training for OVCs included the provision of 8,508 scholarships for OVCs in 2008–10.<sup>1381</sup> In *Ghana*, a programme of monetary assistance for households for the upkeep of orphans was conditional on sending children of school age to school.<sup>1382</sup> In addition, in *Burkina Faso*, education and training was provided to approximately 10,000 OVCs through the strategic national framework to combat HIV and AIDS for 2006–10.<sup>1383</sup> The provision of vocational training can also lead to appropriate types of employment for young persons and help to prevent these adolescents from engaging in the worst forms of child labour.<sup>1384</sup> Considering that access to free basic education contributes to preventing the engagement of children in the worst forms of child labour, the Committee must emphasize the need for the

<sup>1375</sup> *Kenya* – CEACR, direct request, 2010; *Mozambique* – CEACR, observation, 2010; and *Namibia* – CEACR, direct request, 2010.

<sup>1376</sup> *Lesotho* – CEACR, direct request, 2011.

<sup>1377</sup> See, for example, *Ethiopia* – CEACR, direct request, 2010; and *Malawi* – CEACR, direct request, 2011.

<sup>1378</sup> See, for example, *Chad* – CEACR, direct request, 2011; and *Rwanda* – CEACR, direct request, 2011.

<sup>1379</sup> For example, in the *Philippines*, children affected by HIV and AIDS have inadequate access to basic education, and in *Azerbaijan*, children infected with HIV and AIDS face discrimination and may be excluded from mainstream schooling. *Philippines* – CEACR, direct request, 2010; and *Azerbaijan* – CEACR, direct request, 2009.

<sup>1380</sup> For example, in *Mauritania*, only 33 per cent of child HIV and AIDS orphans between 10 and 14 years of age attend school, compared with a rate of around 71 per cent among non-orphans. In *Côte d'Ivoire*, the school attendance rate of HIV and AIDS orphans between the ages of 10 and 14 years fell from 62.4 per cent in 2007 to 35.7 per cent in 2009. *Mauritania* – CEACR, direct request, 2010; and *Côte d'Ivoire* – CEACR, direct request, 2011; in addition to, for example, *Rwanda* – CEACR, direct request, 2011; and *Papua New Guinea* – CEACR, direct request, 2011.

<sup>1381</sup> *Senegal* – CEACR, direct request, 2011.

<sup>1382</sup> *Ghana* – CEACR, direct request, 2011.

<sup>1383</sup> *Burkina Faso* – CEACR, direct request, 2010.

<sup>1384</sup> *Zambia* – CEACR, observation, 2010.

governments concerned to take effective measures to facilitate access to, and attendance in, free basic education or vocational training, as appropriate, for OVCs.

#### Good practices in mainstreaming OVC issues into national policies and programmes to combat child labour

593. Lastly, the Committee wishes to highlight the important trend of mainstreaming OVC issues into national policies and programmes to combat child labour. For example, in *Kenya*, the National Plan of Action on the Elimination of Child Labour, 2004–15, identifies the HIV and AIDS pandemic as a contributing factor to child labour, and contains measures to lessen this impact.<sup>1385</sup> In *Sri Lanka*, the National Plan of Action for Children includes measures aimed at providing an adequate number of homes to accommodate HIV and AIDS orphans,<sup>1386</sup> and the National Strategy and Action Programme Towards the Elimination of Child Labour in *Swaziland* contains measures to open community registers of child-headed households and to better manage the education of OVCs.<sup>1387</sup> ILO–IPEC projects also frequently address the vulnerability of OVCs. These include the ILO–IPEC project to combat and prevent HIV and AIDS-induced child labour in sub-Saharan Africa (implemented in *Uganda* and *Zambia*),<sup>1388</sup> and a project implemented in *Malawi* containing measures to strengthen community-based safety nets to support OVCs, while providing for OVCs withdrawn from child labour through school feeding, home rations projects and targeted family assistance in the form of business start-up support and the provision of subsidized fertilizers.<sup>1389</sup>

#### *Roma children*

594. *The Committee observes that in many member States, particularly in Eastern Europe, Roma children are particularly vulnerable to certain worst forms of child labour. Roma children are victims of both internal and external trafficking, particularly to western European countries.*<sup>1390</sup> *They are trafficked for the purposes of forced begging*<sup>1391</sup> *and prostitution,*<sup>1392</sup> *and are used in illicit activities, including theft*<sup>1393</sup> *and the sale of narcotics.*<sup>1394</sup> *Moreover, in several member States, Roma children constitute a majority, or a large proportion, of the children living in the streets.*<sup>1395</sup> *The Committee must emphasize the importance of protecting Roma children from these worst forms of child labour, due to the myriad factors which*

<sup>1385</sup> *Kenya* – CEACR, direct request, 2010.

<sup>1386</sup> *Sri Lanka* – CEACR, direct request, 2008.

<sup>1387</sup> *Swaziland* – CEACR, direct request, 2010.

<sup>1388</sup> *Uganda* – CEACR, direct request, 2011; and *Zambia* – CEACR, direct request, 2009.

<sup>1389</sup> *Malawi* – CEACR, direct request, 2011.

<sup>1390</sup> See, for example, *Austria* – CEACR, direct request, 2011.

<sup>1391</sup> See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Slovakia* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

<sup>1392</sup> See, for example, *Czech Republic* – CEACR, direct request, 2011; and *Hungary* – CEACR, direct request, 2010.

<sup>1393</sup> See, for example, *Bulgaria* – CEACR, direct request, 2004; and *United Kingdom* – CEACR, direct request, 2007.

<sup>1394</sup> See, for example, *Serbia* – CEACR, direct request, 2010.

<sup>1395</sup> See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Greece* – CEACR, direct request, 2009; *Georgia* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

*contribute to their vulnerability, including poverty, discrimination and insufficient social protection programmes.*

#### Programmatic measures to address the vulnerability of Roma children

595. The Committee notes the value of broad, multi-pronged programmes to reach out to Roma children, such as the Action Plan and Strategy for Addressing the Roma Problem in *Bosnia and Herzegovina*,<sup>1396</sup> and the multi-nation initiative, the Decade of Roma Inclusion,<sup>1397</sup> through which numerous measures have been implemented in a number of member States.<sup>1398</sup> However, these initiatives are not always successful.<sup>1399</sup> In countries where some measures have been undertaken, but Roma children remain particularly vulnerable, the Committee calls on the governments concerned to intensify their efforts (including within the framework of the Decade of Roma Inclusion), and to take concrete measures to protect Roma children from the worst forms of child labour.

#### The importance of access to free basic education for Roma children

596. Roma children often face difficulties in accessing and remaining in school. In this regard, the Committee has welcomed specific initiatives to raise the enrolment rates of Roma children in many countries. For example, in *Slovenia*, strategies were adopted for the education of Roma children (such as pre-school programmes and optional classes on Roma culture), and additional funds were allocated to schools enrolling Roma children.<sup>1400</sup> In *Montenegro*, the Roma Education Initiative was implemented aimed at integrating a greater number of Roma children into the formal school system, through the provision of free textbooks and transport.<sup>1401</sup> In *The former Yugoslav Republic of Macedonia*, several measures to reduce the school drop-out rate of Roma children were taken, including the provision of 650 scholarships for Roma children and the construction of a secondary school in a Skopje neighbourhood predominantly inhabited by the Roma population.<sup>1402</sup> In *Latvia*, the National Programme on Roma was implemented with the aim of raising enrolment rates among Roma children, through the provision of preparatory classes, the improved enforcement of the Education Law in order to motivate Roma parents to ensure continuous education for their children and opportunities for Roma children to return to school following drop-out.<sup>1403</sup>

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<sup>1396</sup> *Bosnia and Herzegovina* – CEACR, direct request, 2011.

<sup>1397</sup> Decade of Roma Inclusion initiative by 12 European countries to improve the socio-economic and social inclusion of the Roma minority across the region.

<sup>1398</sup> See, for example, *Albania* – CEACR, observation, 2011; *Croatia* – CEACR, direct request, 2011; *Romania* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

<sup>1399</sup> For example, despite some effective initiatives, the implementation of the Strategy for the Improvement of the Living Conditions of the Roma Minority in *Albania* was generally poor. *Albania* – CEACR, observation, 2011.

<sup>1400</sup> *Slovenia* – CEACR, direct request, 2010.

<sup>1401</sup> *Montenegro* – CEACR, direct request, 2010.

<sup>1402</sup> *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

<sup>1403</sup> *Latvia* – CEACR, direct request, 2010.

597. However, the Committee observes that the level of success of these initiatives is varied,<sup>1404</sup> and that despite the measures taken by certain member States, school drop-out rates remain significantly higher among Roma children than non-Roma children,<sup>1405</sup> or the vast majority of Roma children do not attend school.<sup>1406</sup> The Committee therefore notes that much progress remains to be made in this area. Considering the vital importance of access to free basic education in the fight against the worst forms of child labour, the Committee calls on the governments concerned to strengthen their efforts to facilitate access to education for Roma children.

*Children from poor families and rural areas*

598. ***Due to the strong links between poverty and the worst forms of child labour, the Committee wishes to highlight the vulnerability of children from poor families to the worst forms of child labour.***<sup>1407</sup> ***Moreover, children from rural areas may be particularly vulnerable to trafficking to urban areas,***<sup>1408</sup> ***for the purpose of commercial sexual exploitation,***<sup>1409</sup> ***begging***<sup>1410</sup> ***or for domestic work.***<sup>1411</sup> ***Furthermore, in several countries, it is largely schools in poor and rural areas that contract out their students to perform compulsory labour during school hours.***<sup>1412</sup> ***Lastly, in several member States, the vast majority of child domestic workers***<sup>1413</sup> ***or street children***<sup>1414</sup> ***are migrants from the countryside.***

Measures to reach out to children from poor families and rural areas

599. Many policies and interventions which work to reduce the vulnerability of children from poor families do not specifically target child labour, but instead are aimed at poverty reduction. For example, in *Mongolia*, the particular vulnerability of children from poor families to the worst forms of child labour has been addressed through programmes which offer such children financial assistance for education and health.<sup>1415</sup> Moreover, in several countries the provision of cash transfers to poor families (often conditional on the school attendance of their children) works to reduce the vulnerability

<sup>1404</sup> For example, the effectiveness of the measures adopted in *Slovakia* in 2008 to assist Roma pupils in school was limited by a lack of available teachers and low parental interest for Roma language and culture classes, and the de facto segregation of Roma children in education continues. In *Serbia*, despite the implementation of projects such as “Assistance to Roma children in education”, only 13 per cent of Roma children complete primary education. See *Serbia* – CEACR, direct request, 2010; and *Slovakia* – CEACR, direct request, 2011.

<sup>1405</sup> *Latvia* – CEACR, direct request, 2010; *Hungary* – CEACR, direct request, 2010; *Serbia* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

<sup>1406</sup> *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Croatia* – CEACR, direct request, 2011; and *Montenegro* – CEACR, direct request, 2010.

<sup>1407</sup> See, for example, *Bahamas* – CEACR, direct request, 2010; and *Mongolia* – CEACR, direct request, 2010.

<sup>1408</sup> See, for example, *Benin* – CEACR, direct request, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2009; and *Mozambique* – CEACR, observation, 2010.

<sup>1409</sup> See, for example, *Kyrgyzstan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1410</sup> See, for example, *Mauritania* – CEACR, observation, 2008; and *Senegal* – CEACR, observation, 2011.

<sup>1411</sup> See, for example, *Haiti* – CEACR, observation, 2011; *Liberia* – CEACR, direct request, 2011; *Togo* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1412</sup> See, for example, *China* – CEACR, observation, 2011; and *Uzbekistan* – CEACR, observation, 2011.

<sup>1413</sup> See, for example, *Morocco* – CEACR, observation, 2010; *Sri Lanka* – CEACR, observation, 2004; and *Togo* – CEACR, observation, 2011.

<sup>1414</sup> See, for example, *Egypt* – CEACR, observation, 2011.

<sup>1415</sup> *Mongolia* – CEACR, direct request, 2010.

of these children, including in *Dominican Republic, Lebanon* and *Panama*.<sup>1416</sup> Measures may also be implemented in the context of programmes specifically targeting child labour, as in *Brazil*, where poor families with working children were provided with family allowances and grants through the Programme to Eliminate Child Labour.<sup>1417</sup>

600. A combination of factors contribute to the particular vulnerability of children from rural areas, including regional isolation, poverty, lack of access to education, a higher probability of engaging in hazardous agricultural work and particular vulnerability upon migration to urban areas. Therefore, taking comprehensive time-bound measures to provide effective protection to these children is necessary. For example, the Committee welcomed the ILO–IPEC project “Providing for direct intervention against the worst forms of child labour in rural areas” in *Morocco*, and the programmes implemented in *Colombia* for the support of families living in remote rural areas.<sup>1418</sup> Such initiatives may also focus on one specific worst form of child labour, as in *Thailand*, where a phase of the National Plan on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women focused on rural areas, due to the particular vulnerability of the rural population.<sup>1419</sup>

601. Observing the positive impact of these measures, the Committee considers it essential that member States take effective and time-bound measures to protect children from poor families and rural areas from the worst forms of child labour.

#### Good practices to facilitate access to education for children from poor families and rural areas

602. In many countries, children from poor families are more likely to drop out of school.<sup>1420</sup> Moreover, in many States, children living in rural areas face limited access to education<sup>1421</sup> due to the long distances between rural homes and the nearest schools,<sup>1422</sup> the requirement for these children to stay home to work in agriculture with their parents,<sup>1423</sup> the insufficient number of rural schools to absorb all school-aged children<sup>1424</sup> and the closure of schools in rural areas for economic reasons.<sup>1425</sup> The Committee has consistently called on governments to take measures to increase enrolment and attendance rates of children from these vulnerable groups.<sup>1426</sup>

<sup>1416</sup> *Dominican Republic* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; and *Panama* – CEACR, observation, 2011.

<sup>1417</sup> *Brazil* – CEACR, direct request, 2008.

<sup>1418</sup> *Colombia* – CEACR, direct request, 2011.

<sup>1419</sup> *Thailand* – CEACR, observation, 2010.

<sup>1420</sup> See, for example, *Angola* – CEACR, observation, 2011; *Comoros* – CEACR, direct request, 2011; and *Jordan* – CEACR, direct request, 2011.

<sup>1421</sup> See, for example, *Albania* – CEACR, direct request, 2011; *Angola* – CEACR, observation, 2011; *Lesotho* – CEACR, direct request, 2011; *Ukraine* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2006;

<sup>1422</sup> See, for example, *Islamic Republic of Iran* – CEACR, direct request, 2009.

<sup>1423</sup> See, for example, *Lao People’s Democratic Republic* – CEACR, direct request, 2010.

<sup>1424</sup> See, for example, *Liberia* – CEACR, direct request, 2011.

<sup>1425</sup> See, for example, *Estonia* – CEACR, direct request, 2011.

<sup>1426</sup> See, for example, *Albania* – CEACR, direct request, 2011; *Lao People’s Democratic Republic* – CEACR, direct request, 2010; and *Zambia* – CEACR, direct request, 2010.

603. Measures taken in this regard include the establishment of the regional primary education boarding schools in *Turkey* (to ensure access to primary education for children in rural areas and villages and hamlets which do not have schools and for children from poor families) which provided education to 282,132 children in 2006–07 and school transport to 649,329 students in 81 provinces who live in underpopulated and scattered areas.<sup>1427</sup> In addition, school meal programmes have been implemented in a wide variety of countries, including *Bangladesh*, *Ghana*, *Kenya*, *Saint Lucia* and *Slovenia*, to encourage school attendance.<sup>1428</sup> In *Cape Verde*, a programme to facilitate school attendance of children from poor families by paying their school fees, school materials, and school meals, was implemented with the support of the World Food Programme and UNICEF,<sup>1429</sup> and in *Swaziland* a school feeding programme was established for schools in rural areas.<sup>1430</sup> In this regard, the Committee is of the view that governments must continue to take the necessary measures to facilitate access to education for children from poor families due to the important contribution of education in combating the worst forms of child labour.

#### Taking into account the special situation of girls in rural areas

604. In many member States, girls living in rural areas face additional barriers to their participation in schools. In some member States, girls from rural areas are not aware of their right to education,<sup>1431</sup> and the lack of qualified women teachers in rural areas contributes to their higher drop-out rates.<sup>1432</sup> Moreover, in some member States, parents in rural areas do not want to send their daughters to co-educational schools and, to address this problem, more girls' schools must be established in rural areas.<sup>1433</sup> For example, in *Bangladesh*, the Female Secondary School Assistance Project-II aims to improve the quality of and the access of girls to secondary education in rural areas of the country.<sup>1434</sup> In *Yemen*, the National Action Plan for Children includes a focus on increasing qualified women teachers in rural areas and creating demand for girls' education.<sup>1435</sup> Despite the measures taken in some member States to facilitate access to education for girls from rural areas, the Committee observes that higher drop-out rates and lower attendance rates among this group persist in many States.<sup>1436</sup> It therefore calls on all governments concerned to strengthen the efforts being made in this regard as a step towards reducing the vulnerability of girls living in rural areas to the worst forms of child labour.

<sup>1427</sup> *Turkey* – CEACR, direct request, 2009.

<sup>1428</sup> *Bangladesh* – CEACR, direct request, 2011; *Ghana* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2010; *Saint Lucia* – CEACR, direct request, 2010; and *Slovenia* – CEACR, direct request, 2010.

<sup>1429</sup> *Cape Verde* – CEACR, direct request, 2011.

<sup>1430</sup> *Swaziland* – CEACR, direct request, 2010.

<sup>1431</sup> See, for example, *Iraq* – CEACR, direct request, 2011.

<sup>1432</sup> *Yemen* – CEACR, direct request, 2011.

<sup>1433</sup> See, for example, *Egypt* – CEACR, observation, 2011.

<sup>1434</sup> *Bangladesh* – CEACR, direct request, 2011.

<sup>1435</sup> *Yemen* – CEACR, direct request, 2010.

<sup>1436</sup> See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2010; *Islamic Republic of Iran* – CEACR, direct request, 2009; *Niger* – CEACR, observation, 2011; *Nigeria* – CEACR, direct request, 2011; *Senegal* – CEACR, direct request, 2011; and *Tajikistan* – CEACR, direct request, 2011.

### *Children living and working on the street*

605. *The Committee also wishes to highlight the particular vulnerability of street children to the worst forms of child labour. Street children can be found in urban areas in all regions around the world, and are particularly at risk of becoming victims of trafficking,<sup>1437</sup> forced labour,<sup>1438</sup> prostitution,<sup>1439</sup> begging,<sup>1440</sup> use in the sale and trafficking of drugs<sup>1441</sup> and other petty crimes,<sup>1442</sup> in addition to hazardous work.<sup>1443</sup>*

### Programmes to reach out to street children

606. Some States have undertaken national plans of action on street children.<sup>1444</sup> For example, in *Mexico*, the programme of prevention and assistance to girls, boys and young persons living in the streets benefited 212,776 children between 2001 and 2008.<sup>1445</sup> Moreover, shelters<sup>1446</sup> and day centres<sup>1447</sup> for street children have been established in many member States, and these may be combined with child protection units<sup>1448</sup> and the provision of health and social services<sup>1449</sup> for the thorough protection of these children.

607. For the long-term protection of street children from the worst forms of child labour, relevant initiatives must not only remove the children from their vulnerable situation, but also provide for their rehabilitation and social reintegration. For example, in *Uganda*, a programme implemented by the Ministry of Gender, Labour and Social Development identified, withdrew, rehabilitated, resettled and supported 1,136 street children, who also benefited from a programme of non-formal education.<sup>1450</sup> In *Turkey*, the Government operates 36 centres and six homes that offer rehabilitation services through which, by the end of 2008, 4,270 children who lived or worked in the street and their families were provided with housing, social services and social protection.<sup>1451</sup>

<sup>1437</sup> See, for example, *Georgia* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

<sup>1438</sup> See, for example, *Jordan* – CEACR, direct request, 2011.

<sup>1439</sup> See, for example, *Kyrgyzstan* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

<sup>1440</sup> See, for example, *Italy* – CEACR, direct request, 2011; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Senegal* – CEACR, observation, 2011; *Saudi Arabia* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1441</sup> See, for example, *Jamaica* – CEACR, direct request, 2011.

<sup>1442</sup> See, for example, *Haiti* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

<sup>1443</sup> See, for example, *Mexico* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; and *Turkey* – CEACR, observation, 2011.

<sup>1444</sup> See, for example, *Panama* – CEACR, observation, 2011.

<sup>1445</sup> *Mexico* – CEACR, observation, 2011.

<sup>1446</sup> See, for example, *Georgia* – CEACR, direct request, 2006; *Germany* – CEACR, direct request, 2011; and *Islamic Republic of Iran* – CEACR, direct request, 2011.

<sup>1447</sup> See, for example, *Egypt* – CEACR, observation, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

<sup>1448</sup> See, for example, *Bulgaria* – CEACR, observation, 2009; and *Morocco* – CEACR, direct request, 2011.

<sup>1449</sup> See, for example, *Cape Verde* – CEACR, direct request, 2011; and *Germany* – CEACR, direct request, 2011.

<sup>1450</sup> *Uganda* – CEACR, direct request, 2010.

<sup>1451</sup> *Turkey* – CEACR, observation, 2011.



### Reintegrating street children into educational programmes

608. The Committee also wishes to highlight the importance of education in reaching out to street children, as these children often drop out of school at a very young age or have extremely limited access to education.<sup>1452</sup> In this respect, the Committee has welcomed programmes such as the initiative entitled “Vocational education for street children” in *Kyrgyzstan*.<sup>1453</sup> In *Bangladesh*, several NGOs are implementing projects targeting the withdrawal of street children through non-formal education and skills development activities and, in *Jamaica*, the YMCA (an NGO) offers training, remedial education and vocational training to street boys, with the possibility of mainstreaming these children into technical high schools.<sup>1454</sup> Due to the particular vulnerability of street children, the Committee welcomes the wide range of initiatives implemented by a certain number of member States.

609. However, despite the positive measures taken in numerous member States, vulnerable street children remain a pressing issue in a significant number of urban areas. The Committee observes that the number of street children is growing in a number of member States,<sup>1455</sup> and that several such States lack comprehensive strategies or programmes to address this problem.<sup>1456</sup> In this regard, the Committee must emphasize that the governments concerned should take comprehensive time-bound measures to identify and remove street children from their at-risk situation, and to provide for their rehabilitation and social reintegration into either formal or non-formal education or vocational training, to ensure that these children do not return to the vulnerable situation of living and working on the streets.

### Enhanced international cooperation and mutual assistance

610. The existence of the worst forms of child labour is an issue that not only concerns the countries which suffer most from its prevalence, but also the international community as a whole. To ensure the immediate suppression of extreme forms of child labour, mutual assistance and support between member States is of particular importance.<sup>1457</sup> Therefore, *Article 8* of the Convention provides that member States shall take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation and/or assistance, including support for social and economic development, poverty eradication programmes and universal education.

<sup>1452</sup> See, for example, *Czech Republic* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; and *Uzbekistan* – CEACR, direct request, 2011.

<sup>1453</sup> *Kyrgyzstan* – CEACR, direct request, 2011. See also *Burkina Faso* – CEACR, direct request, 2011.

<sup>1454</sup> *Bangladesh* – CEACR, direct request, 2011; and *Jamaica* – CEACR, direct request, 2011.

<sup>1455</sup> See, for example, *Djibouti* – CEACR, direct request, 2011; *Ethiopia* – CEACR, direct request, 2011; *Greece* – CEACR, direct request, 2011; *Haiti* – CEACR, direct request, 2011; *Niger* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; *Pakistan* – CEACR, direct request, 2011; *Senegal* – CEACR, observation, 2011; *Uzbekistan* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1456</sup> See, for example, *Jordan* – CEACR, direct request, 2011; and *Malawi* – CEACR, direct request, 2011.

<sup>1457</sup> *Child labour*, 1999, op. cit., p. 79.

### *International and regional organizations*

611. International cooperation implies that countries ratify other international instruments that may have an impact on the eradication of the worst forms of child labour.<sup>1458</sup> In this regard, an important number of countries have entered international, regional and bilateral agreements in order to combat the worst forms of child labour.

612. Countries may also join international or regional organizations or associations. Most member States are, for example, members of Interpol, which helps cooperation between police and the judiciary in countries in the different regions, especially in the fight against trafficking of children.<sup>1459</sup> Some European countries are part of Europol,<sup>1460</sup> the Council of the Baltic Sea States,<sup>1461</sup> or the Regional Centre for Combating Trans-border Crime (the Southeast European Cooperative Initiative).<sup>1462</sup> Southeast Asian countries, through their regional organization (the Association of Southeast Asian Nations – ASEAN), have undertaken some regional activities to help eradicate child commercial sexual exploitation.<sup>1463</sup>

### *International and regional cooperation*

613. Another positive practice that the Committee has observed is that of member States which invest in governmental or non-governmental organizations or provide assistance to other countries in order to combat the worst forms of child labour. For instance, the *United States* Department of Labor contributes, in a large measure, to the ILO–IPEC programme, which provides technical assistance to various countries to combat the worst forms of child labour. Another example is *New Zealand's* International Aid and Development Agency, which made contributions in 2006–07 to various United Nations agencies (such as UNFPA, UNICEF, UNHCR and UNDP) which contribute to addressing child labour issues.<sup>1464</sup> The Committee has noted with interest that, since 2003, *New Zealand* has contributed to a number of projects regarding the worst forms of child labour which target children involved in trafficking (*Cambodia, Indonesia*); children working on the street (*Cambodia, United Republic of Tanzania*); children affected by armed conflict (*Papua New Guinea, Sudan*); orphans and other vulnerable children (*Namibia, United Republic of Tanzania, Zimbabwe*); and children involved in commercial sexual exploitation (*India, Philippines*).

<sup>1458</sup> See Part I. See also, for example, *Belgium* – CEACR, direct request, 2006; *Bulgaria* – CEACR, direct request, 2005; *Cyprus* – CEACR, direct request, 2009; *Fiji* – CEACR, direct request, 2007; *Hungary* – CEACR, direct request, 2006; *Kenya* – CEACR, direct request, 2005; *Republic of Korea* – CEACR, direct request, 2006; *Latvia* – CEACR, direct request, 2009; *Mongolia* – CEACR, direct request, 2005; and *Nigeria* – CEACR, direct request, 2005.

<sup>1459</sup> See, for example, *Belgium* – CEACR, direct request, 2006; *Botswana* – CEACR, direct request, 2005; *Bulgaria* – CEACR, direct request, 2005; *Chad* – CEACR, direct request, 2006; *Congo* – CEACR, direct request, 2006; *Hungary* – CEACR, direct request, 2006; *Ireland* – CEACR, direct request, 2005; *Kenya* – CEACR, direct request, 2005; *Republic of Korea* – CEACR, direct request, 2006; *Mongolia* – CEACR, direct request, 2005; *Nigeria* – CEACR, direct request, 2006; and *Oman* – CEACR, direct request, 2005.

<sup>1460</sup> See, for example, *Netherlands* – CEACR, direct request, 2008.

<sup>1461</sup> See, for example, *Lithuania* – CEACR, direct request, 2010; *Poland* – CEACR, direct request, 2010; *Russian Federation* – CEACR, observation, 2010; and *Sweden* – CEACR, direct request, 2010.

<sup>1462</sup> *Republic of Moldova* – CEACR, direct request, 2006.

<sup>1463</sup> See, for example, *Singapore* – CEACR, direct request, 2008.

<sup>1464</sup> *New Zealand* – CEACR, direct request, 2008.

614. Similarly, the Ministry of Foreign Affairs of *Denmark* implemented a programme to combat human trafficking in Eastern Europe for the period 2009–11, with a focus on *Belarus, Republic of Moldova and Ukraine*.<sup>1465</sup> Similarly, the Government of *Portugal* supports a variety of projects that promote the education of children in *Angola, Cape Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe and Timor-Leste*.<sup>1466</sup> These programmes include projects to improve school attendance rates and reduce drop-out rates (particularly among girls), projects to provide school supplies to disadvantaged children and to construct educational infrastructure.

*Cooperation to combat the sale and trafficking and commercial sexual exploitation of children*

615. One very important global trend that the Committee has seen emerge is the commitment member States have shown to combating the sale and trafficking and the commercial sexual exploitation of children through mutual assistance.

*Regional agreements*

616. Several countries have adopted regional cooperation agreements or concluded multilateral or bilateral memoranda of understanding to reduce the flow of children being trafficked across borders and allow for an exchange of information in order to monitor the actions of traffickers.<sup>1467</sup> This is the case in *Benin, Burkina Faso, Côte d'Ivoire, Liberia, Mali, Niger, Nigeria and Togo*, which all signed the Multilateral Cooperation Agreement to Combat the Trafficking of Children in West Africa in 2005, under which the governments concerned undertake to adopt measures to develop a common front to prevent, fight, suppress and punish trafficking in persons by mutual cooperation; to protect, rehabilitate and reintegrate victims of trafficking; and to assist each other in investigating, arresting and prosecuting traffickers.<sup>1468</sup> This agreement also establishes a permanent regional monitoring commission on child trafficking.

617. The Committee also noted the “Mekong subregional cooperation in the anti-trafficking process”, which was concluded by ministers from *China, Cambodia, Lao People's Democratic Republic, Myanmar, Viet Nam and Thailand*.<sup>1469</sup> The Mekong project involves the strengthening of multinational and bilateral structures, policies and processes to address trafficking in children and women within a broader migration framework, with the other participant countries. In the framework of this project, several joint memoranda of understanding were signed between the countries to provide assistance to victims of trafficking. The Committee also noted with interest that the project *Ciudades gemelas*, which is aimed at establishing a regional strategy for combating trafficking of children and adolescents for sexual exploitation in MERCOSUR and is funded by the Inter-American Development Bank (IADB), involves

<sup>1465</sup> *Denmark* – CEACR, direct request, 2010. See also *Saudi Arabia* – CEACR, direct request, 2006.

<sup>1466</sup> *Portugal* – CEACR, direct request, 2010.

<sup>1467</sup> *Malaysia* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2011.

<sup>1468</sup> See, for example, *Burkina Faso* – CEACR, observation, 2009; *Gambia* – CEACR, direct request, 2010; *Liberia* – CEACR, direct request, 2011; *Mali* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; and *Nigeria* – CEACR, direct request, 2006.

<sup>1469</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; and *Lao People's Democratic Republic* – CEACR, direct request, 2010.

14 border cities of MERCOSUR (*Argentina, Brazil, Uruguay and Paraguay*), including Ciudad del Este (*Paraguay*), Foz de Iguazu (*Brazil*) and Puerto Iguazú (*Argentina*).<sup>1470</sup>

#### Bilateral agreements

618. Many member States have also signed bilateral agreements to enhance cooperation between their enforcement agencies in the field of information exchange and training with a view to eliminating the trafficking and commercial sexual exploitation of children.<sup>1471</sup> The Governments of *Lesotho* and *South Africa*, for instance, have established an anti-trafficking cooperative relationship through which their respective security agencies collaborate on efforts to bring human traffickers to justice. Pursuant to this cooperation, the countries' law enforcement agencies have been holding meetings in towns along their shared border to sensitize the public to the dangers of trafficking.<sup>1472</sup>

#### National measures aimed at enhancing cooperation

619. Member States may also take measures on their own initiative aimed at enhancing transnational cooperation. In *Kuwait*, for example, the Committee has noted that the draft Trafficking Bill explicitly refers to the question of legal and judicial competence for transnational crimes, which can have a real impact on combating trafficking and the smuggling of migrants, in enhancing international cooperation to prevent and eliminate child trafficking and to ensure that individuals who traffic children across borders are effectively prosecuted.<sup>1473</sup> In *Lithuania*, a repatriation system, along with consular and other necessary assistance, is under development to facilitate the safe and prompt voluntary return of victims of trafficking from foreign countries.<sup>1474</sup> In *Zambia*, the police service established a human trafficking desk as a way of cooperating with other countries to combat human trafficking.<sup>1475</sup>

#### Moving towards enhanced international cooperation and mutual assistance

620. *The Committee is of the view that international cooperation between law enforcement agencies is indispensable to prevent and eliminate the sale and trafficking of children and their commercial sexual exploitation, through the collection and exchange of information and assistance with a view to detecting, prosecuting and convicting the individuals involved and repatriating the victims.*<sup>1476</sup> *Therefore, where it observes that member States suffer from a more acute problem of sale and trafficking of children in practice, the Committee underlines that they must take measures to combat the trafficking of children through international cooperation, in accordance with Article 8 of the Convention,*<sup>1477</sup> *or to strengthen international cooperation through multilateral, regional and bilateral arrangements for the*

<sup>1470</sup> *Paraguay* – CEACR, observation, 2011. See also *Argentina* – CEACR, observation, 2011; and *Uruguay* – CEACR, direct request, 2010.

<sup>1471</sup> See, for example, *Cyprus* – CEACR, direct request, 2009; *Togo* – CEACR, observation, 2011; *United Arab Emirates* – CEACR, observation, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

<sup>1472</sup> *Lesotho* – CEACR, direct request, 2011.

<sup>1473</sup> *Kuwait* – CEACR, direct request, 2010. See also, *Suriname* – CEACR, direct request, 2010; and *Switzerland* – CEACR, direct request, 2006.

<sup>1474</sup> *Lithuania* – CEACR, direct request, 2010.

<sup>1475</sup> *Zambia* – CEACR, observation, 2010.

<sup>1476</sup> *Nicaragua* – CEACR, observation, 2010.

<sup>1477</sup> See, for example, *Libya* – CEACR, direct request, 2011; and *Tunisia* – CEACR, direct request, 2010.

*prevention, detection, investigation, repatriation, prosecution and punishment of those responsible for these acts.*<sup>1478</sup> Furthermore, the Committee requests governments to strengthen cooperation between the countries that have signed the multilateral agreements in order to identify and arrest persons working in networks involving the trafficking of children, and to detect and intercept child victims of trafficking at the borders.<sup>1479</sup>

### Poverty eradication

621. Member States are required to adopt measures and programmes to combat poverty in their countries so as to ensure that children are less at risk of entering child labour and its worst forms. In cases where the Committee specifically highlights issues of poverty, the Conference Committee on the Application of Standards has called on member States to provide assistance to the governments concerned, in line with *Article 8* of the Convention.<sup>1480</sup>

622. Countries have adopted national action plans and programmes, including national strategic development plans (NSDPs), Poverty Reduction Strategy Papers (PRSPs) and Poverty Reduction Strategy Frameworks (PRSFs) in order to free families from poverty.<sup>1481</sup> Through these various initiatives, ways were determined to increase the well-being of families by establishing mutual help groups (micro-credit), reduce poverty levels, establish conditions which ensure the survival and all-round development of all children, improve the living standards of the population,<sup>1482</sup> and reduce rural poverty, social exclusion in urban areas and precarious living conditions.<sup>1483</sup> Moreover, in the framework of these poverty reduction programmes, the problem of child labour and its worst forms is sometimes taken into account as a cross-cutting issue and placed in the overall framework of improving the situation of children and the role of the family.<sup>1484</sup> Child labour policies are generally implemented in coherence with the established poverty reduction plans, programmes or strategies.<sup>1485</sup>

623. For example, the Committee noted that, in *Djibouti*, a PRSF had been adopted to boost growth with the aim of ensuring the participation of the poorest groups in economic activities, as well as the National Social Development Initiative of the President of the Republic for 2008–11, which focuses on youth unemployment and

<sup>1478</sup> See, for example, *Lithuania* – CEACR, direct request, 2010; *Sweden* – CEACR, direct request, 2010; *Thailand* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2011.

<sup>1479</sup> See, for example, *Argentina* – CEACR, direct request, 2009; *Benin* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, observation, 2009; *Chile* – CEACR, direct request, 2009; *Côte d'Ivoire* – CEACR, observation, 2010; and *Ecuador* – CEACR, observation, 2011.

<sup>1480</sup> See, for example, *Democratic Republic of the Congo* – Provisional Record No. 16, ILC, 98th Session, Geneva, 2009, Part II, p. 16/148; *Niger* – Provisional Record No. 22, ILC, 93rd Session, Geneva, 2005, Part 2, p. 22/70.

<sup>1481</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; *Central African Republic* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2006; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Equatorial Guinea* – CEACR, direct request, 2007; *Fiji* – CEACR, direct request, 2007; *Slovenia* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2008.

<sup>1482</sup> See, for example, *Kyrgyzstan* – CEACR, direct request, 2011; and *Madagascar* – CEACR, direct request, 2010.

<sup>1483</sup> *Morocco* – CEACR, direct request, 2011.

<sup>1484</sup> See, for example, *Mali* – CEACR, observation, 2010; *Mozambique* – CEACR, direct request, 2009; and *Nepal* – CEACR, direct request, 2010.

<sup>1485</sup> *Mongolia* – CEACR, direct request, 2005.

provides for assistance for persons most at risk.<sup>1486</sup> Similarly, the Committee noted that the Government of *Lebanon* had adopted a Social Action Plan (SAP) that addresses working children and their households as one of the main social groups characterized by acute poverty and which targets poor households and large families with children either not enrolled in school or under the legal age to work.<sup>1487</sup> The SAP includes cash-assistance support and follow-up services to households that comply with a number of conditions, including ensuring that their children stay in school until the end of compulsory education, as well as programmes focusing on the prevention of school drop-outs.

624. Other practical measures adopted by governments include the provision of education grants to assist poor families;<sup>1488</sup> aid from the World Bank for debt relief;<sup>1489</sup> the provision of loans and microcredit to the poor;<sup>1490</sup> land and credit reform, human development services, job creation, and community participation in governance;<sup>1491</sup> or simply programmes aimed at improving the population's quality of life through the provision of equal opportunities in employment, education, social protection and other important fields.<sup>1492</sup>

625. *In view of the important correlation between child labour and poverty,*<sup>1493</sup> *the Committee emphasizes that poverty reduction programmes contribute to breaking the cycle of poverty, which is essential for the elimination of the worst forms of child labour.*<sup>1494</sup>

## Enforcement and impact

### Monitoring mechanisms

626. *Article 5* of the Convention provides that member States shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention. Such monitoring mechanisms are essential for the effective translation of the relevant legislation into practice. Due to the multidimensional nature of the worst forms of child labour, several different monitoring institutions play an important role in this regard. The Committee considers that collaboration and information sharing between these various institutions is essential for preventing and combating the worst forms of child labour.<sup>1495</sup>

<sup>1486</sup> *Djibouti* – CEACR, direct request, 2009.

<sup>1487</sup> *Lebanon* – CEACR, direct request, 2010.

<sup>1488</sup> *Algeria* – CEACR, direct request, 2011.

<sup>1489</sup> *Guyana* – CEACR, direct request, 2007.

<sup>1490</sup> *Nigeria* – CEACR, direct request, 2006.

<sup>1491</sup> *Philippines* – CEACR, direct request, 2006.

<sup>1492</sup> *Mexico* – CEACR, direct request, 2011.

<sup>1493</sup> *Mauritania* – CEACR, direct request, 2010.

<sup>1494</sup> See, for example, *Grenada* – CEACR, direct request, 2009; *Guinea* – CEACR, direct request, 2007; *Peru* – CEACR, direct request, 2010; and *Uzbekistan* – CEACR, direct request, 2011.

<sup>1495</sup> See, for example, *Belgium* – CEACR, direct request, 2011.

## Law enforcement agencies

### Good practices in monitoring the worst forms of child labour

627. In most member States, national and local police forces are the primary bodies responsible for monitoring crimes related to child trafficking, child commercial sexual exploitation and the use of children in illicit activities.<sup>1496</sup> Member States should therefore seek to provide specific training to police officers regarding the worst forms of child labour to improve capacity to detect and combat these phenomena,<sup>1497</sup> as well as to prepare officers for the specific needs of child victims of the worst forms of child labour.<sup>1498</sup> Such training can include the incorporation of topics related to the worst forms of child labour into the training curriculum for new officers, workshops and awareness-raising sessions for current officers, capacity-building initiatives and training on sensitive and child-friendly investigation techniques.<sup>1499</sup>

628. The establishment of specific units of officers (trained in issues related to one of the worst forms of child labour) within the police forces appears to have boosted the capacity of these agencies to combat the worst forms of child labour in several member States. These include specific Internet monitoring groups focused on the detection of child pornography,<sup>1500</sup> or trafficking monitoring bodies,<sup>1501</sup> often in the form of a trafficking unit within the law enforcement body,<sup>1502</sup> which assist trafficking victims and gather useful information for investigations,<sup>1503</sup> support child victims of trafficking until their social integration<sup>1504</sup> and organize and intensify joint efforts against human trafficking.<sup>1505</sup> Some member States have also established specialized police units to address child abuse, and these units play a role in combating child commercial sexual exploitation.<sup>1506</sup>

### The importance of collaboration with other institutions

629. Cooperation between law enforcement agencies and the labour inspectorate system is essential for the implementation of the Convention. Where insufficient collaboration in this regard has hindered the detection of the worst forms of child labour, the

<sup>1496</sup> See, for example, *Cambodia* – CEACR, direct request, 2009; *Cyprus* – CEACR, direct request, 2011; *Djibouti* – CEACR, direct request, 2009; and *Hungary* – CEACR, direct request, 2011.

<sup>1497</sup> See, for example, *Germany* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; and *United Arab Emirates* – CEACR, observation, 2010.

<sup>1498</sup> Law enforcement officers should display adequate sensitivity towards child victims during their removal from the worst forms of child labour and subsequent participation in criminal trials. See, for example, *Mauritius* – CEACR, direct request, 2007; and *Philippines* – CEACR, observation, 2008.

<sup>1499</sup> See, for example, *Czech Republic* – CEACR, direct request, 2011; *Georgia* – CEACR, direct request, 2011; and *Indonesia* – CEACR, observation, 2011.

<sup>1500</sup> See, for example, *Greece* – CEACR, direct request, 2009; *Hungary* – CEACR, direct request, 2011; *Mexico* – CEACR, observation, 2011; and *Tunisia* – CEACR, direct request, 2010.

<sup>1501</sup> See, for example, *Czech Republic* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2010; *Slovenia* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

<sup>1502</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; *Belgium* – CEACR, direct request, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Latvia* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; and *Tajikistan* – CEACR, direct request, 2011.

<sup>1503</sup> *Mexico* – CEACR, observation, 2011.

<sup>1504</sup> *Paraguay* – CEACR, observation, 2011.

<sup>1505</sup> *Austria* – CEACR, direct request, 2009.

<sup>1506</sup> See, for example, *Niger* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Swaziland* – CEACR, direct request, 2010.

Committee urges governments to take measures to foster a collaborative relationship between these two bodies.<sup>1507</sup> Moreover, collaboration between law enforcement agencies and the public prosecutor's office can play an important role in ensuring that investigations result in appropriate prosecutions of perpetrators of the worst forms of child labour.<sup>1508</sup>

#### Gaps in law enforcement

630. *However, in some member States, the relevant police units have insufficient staff, or few resources, which has a negative impact on the application of the Convention.*<sup>1509</sup> *In this context, the Committee calls on the governments concerned to strengthen the capacity of law enforcement officials responsible for combating the worst forms of child labour. This includes ensuring that sufficient resources are allocated to these institutions for the performance of this mandate. Moreover, the Committee observes that in several countries, corruption among law enforcement officials, or complicity with perpetrators, has hindered the effective monitoring of child labour, and particularly child trafficking.*<sup>1510</sup> *The Committee expresses its deep concern at these occurrences, and calls on the governments concerned to take immediate and effective measures to ensure that any such complicity by law enforcement officials is investigated and prosecuted.*

#### Border and immigration officials

631. Border control officials also play a central role in monitoring the application of the Convention, particularly concerning child trafficking, as well as preventing the distribution of child pornography across borders and the use of children for the trafficking of narcotics. For example, the Anti-Trafficking Act of *Nigeria* provides large powers to customs officers and immigration officers with regard to combating trafficking, including the power of arrest.<sup>1511</sup> In *Armenia*, a border control system was launched to prevent human trafficking at the international airport in Yerevan.<sup>1512</sup> Member States also engage in international cooperation to ensure the better detection of the worst forms of child labour at national borders,<sup>1513</sup> and in many States border and immigration officials have received training with regard to detecting child trafficking.<sup>1514</sup> For example, in *Mozambique*, border guard police received training to improve their capacity to identify, assist and guide persons who have been trafficked.<sup>1515</sup> The capacity of these officers to distinguish child victims of trafficking from illegal child migrants is essential for the identification of victims of this worst form of child labour.<sup>1516</sup> For

<sup>1507</sup> See, for example, *Barbados* – CEACR, direct request, 2011.

<sup>1508</sup> See, for example, *Greece* – CEACR, direct request, 2009; *Peru* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, observation, 2010.

<sup>1509</sup> See, for example, *Benin* – CEACR, direct request, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

<sup>1510</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; *Cambodia* – CEACR, direct request, 2009; *Cameroon* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

<sup>1511</sup> *Nigeria* – CEACR, direct request, 2011.

<sup>1512</sup> *Armenia* – CEACR, direct request, 2011.

<sup>1513</sup> See paras 610–620 above.

<sup>1514</sup> See, for example, *Liberia* – CEACR, direct request, 2011; and *Indonesia* – CEACR, observation, 2009.

<sup>1515</sup> *Mozambique* – CEACR, observation, 2010.

<sup>1516</sup> See, for example, *Jordan* – CEACR, direct request, 2011.



example, the Committee noted with interest the development in the *United Kingdom* of a best practice guide on trafficking for immigration officers which raises awareness of the difference between trafficking and smuggling, to ensure that victims of trafficking are treated fairly.<sup>1517</sup> In cases where insufficiently regulated borders have permitted the trafficking of children, the Committee urges the governments concerned to take the necessary measures to strengthen border control and immigration services in this regard.<sup>1518</sup>

### *Labour inspection*

#### Labour inspection and hazardous work

632. Labour inspection systems are particularly relevant for monitoring the prohibition of hazardous child labour.<sup>1519</sup> Strengthening the capacity of labour inspectors to detect children engaged in hazardous work is essential, particularly in countries where children are, in practice, engaged in hazardous work but no such cases have been detected by the labour inspectorate.<sup>1520</sup> In countries where most children engaged in hazardous work are in the agricultural sector, the Committee supports collaboration between the labour inspectorate and the relevant ministry in charge of agriculture to combat hazardous work<sup>1521</sup> and encourages the expansion of the reach of the labour inspectorate to ensure that all types of farm are inspected, including small enterprises with few workers.<sup>1522</sup> Child labour monitoring systems complement the work of labour inspection systems by monitoring areas of hazardous work that are difficult to reach through labour inspection, such as in the informal economy.<sup>1523</sup>

#### The role of labour inspection in monitoring other worst forms of child labour

633. Labour inspection may also play a role in monitoring worst forms other than hazardous child labour. For example, in *Poland*, training was provided to labour inspectors on the detection of human trafficking for the purpose of forced labour.<sup>1524</sup> In *Zambia*, labour inspectors were trained in the prosecution of child trafficking cases<sup>1525</sup> and in *Brazil* the role of the Special Mobile Inspection Group includes combating the commercial sexual exploitation of children.<sup>1526</sup> Moreover, the Committee noted with interest that in *Gabon* recent legislation provides labour inspectors with the power to question, and have the security forces arrest, any child who they have good reason to think is employed in any activity corresponding to the worst forms of child labour, including in the informal economy.<sup>1527</sup>

<sup>1517</sup> *United Kingdom* – CEACR, direct request, 2006.

<sup>1518</sup> See, for example, *Kazakhstan* – CEACR, direct request, 2011; and *Paraguay* – CEACR, observation, 2011.

<sup>1519</sup> See paras 540–562 above.

<sup>1520</sup> *Thailand* – CEACR, direct request, 2011.

<sup>1521</sup> See, for example, *Uganda* – CEACR, direct request, 2010.

<sup>1522</sup> See, for example, *United States* – CEACR, observation, 2010.

<sup>1523</sup> See, for example, *Albania* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2011; *Malawi* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2011; and *Turkey* – CEACR, direct request, 2010.

<sup>1524</sup> *Poland* – CEACR, direct request, 2010.

<sup>1525</sup> *Zambia* – CEACR, observation, 2010.

<sup>1526</sup> *Brazil* – CEACR, observation, 2010.

<sup>1527</sup> *Gabon* – CEACR, observation, 2011.

*Child protection agencies*

634. Child protection agencies address a wide range of issues related to children's welfare, and member States have indicated that these units play a key role in monitoring the worst forms of child labour, in addition to their role in providing services to children removed from these worst forms of child labour.<sup>1528</sup> For example, in *Bulgaria*, the State Agency for Child Protection (SACP) has established coordination mechanisms for referring and servicing cases of child victims of trafficking.<sup>1529</sup> These agencies may take the form of child welfare institutions,<sup>1530</sup> child protection units<sup>1531</sup> or a children's ombudsman, which receive complaints and initiate investigations into issues relating to child protection.<sup>1532</sup> The Committee encourages the involvement of child protection agencies in supporting the detection of victims of the worst forms of child labour, particularly in difficult to reach populations.

**Penalties**

635. *Article 7(1)* of the Convention requires all member States to "take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions". The types of sanctions to be imposed are not defined by the Convention. However, Paragraph 12 of Recommendation No. 190 specifies that member States should provide that worst forms of child labour – such as all forms of slavery or practices similar to slavery, as well as the use, procuring or offering of a child for prostitution, the production of pornography or pornographic performances, and for illicit activities – are criminal offences. Paragraph 13 provides that Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of hazardous work. Paragraph 14 indicates that member States could have recourse to other criminal, civil or administrative remedies, such as special supervision of enterprises which have used the worst forms of child labour and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.

*Adoption of sufficiently dissuasive penalties to ensure the effective enforcement of the Convention*

636. The Committee has observed that a great number of countries have adopted provisions which impose criminal, administrative and other sanctions, as appropriate, on persons found guilty of the use, procuring or offering of children for the worst forms of child labour.<sup>1533</sup> These penalties vary from one country to another. In *Cambodia*, for

<sup>1528</sup> See, for example, *Antigua and Barbuda* – CEACR, direct request, 2011; *Armenia* – CEACR, direct request, 2011; and *Libya* – CEACR, direct request, 2011.

<sup>1529</sup> *Bulgaria* – CEACR, observation, 2009.

<sup>1530</sup> See, for example, *Chile* – CEACR, direct request, 2007; *Indonesia* – CEACR, direct request, 2011; and *Norway* – CEACR, direct request, 2005.

<sup>1531</sup> See, for example, *Benin* – CEACR, direct request, 2011; and *Malta* – CEACR, direct request, 2007.

<sup>1532</sup> See, for example, *Croatia* – CEACR, direct request, 2011.

<sup>1533</sup> Examples of countries which have adopted comprehensive penalties include *Albania* – CEACR, direct request, 2006; *Angola* – CEACR, direct request, 2005; *Argentina* – CEACR, direct request, 2005; *Bahamas* – CEACR, direct request, 2005; *Bahrain* – CEACR, direct request, 2005; *Barbados* – CEACR, direct request, 2005; *Belarus* – CEACR, direct request, 2005; *Belgium* – CEACR, direct request, 2006; *Botswana* – CEACR, direct request, 2005; *Bulgaria* – CEACR, direct request, 2005; *Cameroon* – CEACR, direct request, 2006; *Chad* – CEACR, direct request, 2006; *Chile* – CEACR, direct request, 2006; *Costa Rica* – CEACR, direct request, 2005; *Croatia* – CEACR, direct request, 2005; *Cyprus* – CEACR, direct request, 2005; *Denmark* – CEACR, direct request, 2006; *El Salvador* – CEACR, direct request, 2005; *Finland* – CEACR, direct request, 2005;

example, the Act on Suppression of Human Trafficking and Sexual Exploitation of 2008 provides for penalties of 15–20 years' imprisonment if a person is found guilty of the sale and trafficking of a minor for cross-border transfer; and of seven to 15 years if a person is found guilty of the purchase of a child for prostitution under 15 years of age, and two to five years if the minor is aged between 15 and 18 years.<sup>1534</sup> Furthermore, section 368 of the Labour Code provides that employers who employ children under 18 years of age under conditions contrary to the provisions of section 177 on hazardous work, are liable to a fine of 31–60 days of the base daily wage of the employee in question. In *Armenia*, the offences of trafficking, prostitution and pornography are punishable by penalties of imprisonment, correctional labour and/or fines, and these offences are more severe if they involve minors.<sup>1535</sup>

### *Issues of application regarding legislation on penalties*

#### Insufficiently deterrent penalties

637. However, the Committee has observed that some countries have adopted sanctions that are not severe enough to be dissuasive and are too minor to act as a deterrent.<sup>1536</sup> In such cases, the Committee has requested the governments concerned to adopt harsher sanctions allowing for the prosecution of those involved in engaging children in the worst forms of child labour. As a result of its previous comments, the Committee noted with interest that section 3(5) of the Labour Act of *Namibia*, as amended in 2007, increased the fine imposed when a person is found guilty of having employed, required or permitted, a child to work in any circumstances prohibited under section 3, which includes hazardous work; the penalty was raised from 4,000 Namibian dollars (NAD) to NAD20,000, or to imprisonment for a period not exceeding four years.<sup>1537</sup>

#### Enforcement of penalties

638. The Committee generally requests governments to provide information on the application in practice of these sanctions, so as to observe their effectiveness in enforcing the provisions giving effect to the Convention.<sup>1538</sup> In this manner, the Committee was able to observe that in the *Republic of Moldova* a total number of

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*France* – CEACR, direct request, 2005; *Germany* – CEACR, direct request, 2006; *Greece* – CEACR, direct request, 2005; *Guatemala* – CEACR, direct request, 2005; *Honduras* – CEACR, direct request, 2005; *Ireland* – CEACR, direct request, 2005; *Japan* – CEACR, direct request, 2005; *Republic of Korea* – CEACR, direct request, 2005; *Libya* – CEACR, direct request, 2005; *Luxembourg* – CEACR, direct request, 2005; *Mali* – CEACR, direct request, 2004; *Malta* – CEACR, direct request, 2005; *Morocco* – CEACR, direct request, 2006; *Mozambique* – CEACR, direct request, 2006; *Netherlands* – CEACR, direct request, 2006; *Nicaragua* – CEACR, direct request, 2005; *Nigeria* – CEACR, direct request, 2006; *Norway* – CEACR, direct request, 2006; *Peru* – CEACR, direct request, 2008; *Poland* – CEACR, direct request, 2006; *Portugal* – CEACR, direct request, 2005; *Saint Vincent and the Grenadines* – CEACR, direct request, 2005; *San Marino* – CEACR, direct request, 2005; *Seychelles* – CEACR, direct request, 2004; *Slovenia* – CEACR, direct request, 2006; *Spain* – CEACR, direct request, 2006; *Swaziland* – CEACR, direct request, 2006; *Togo* – CEACR, direct request, 2005; *Tunisia* – CEACR, direct request, 2005; *Ukraine* – CEACR, direct request, 2006; and *United Kingdom* – CEACR, direct request, 2005.

<sup>1534</sup> *Cambodia* – CEACR, direct request, 2010.

<sup>1535</sup> *Armenia* – CEACR, direct request, 2011.

<sup>1536</sup> See, for example, *Iraq* – CEACR, direct request, 2011; *Kuwait* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2010.

<sup>1537</sup> *Namibia* – CEACR, direct request, 2010. See also *New Zealand* – CEACR, direct request, 2006.

<sup>1538</sup> See, for example, *Australia* – CEACR, direct request, 2011; *Austria* – CEACR, direct request, 2007; *Plurinational State of Bolivia* – CEACR, direct request, 2008; *Cape Verde* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; *South Africa* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

173 persons were convicted for crimes related to trafficking of persons in 2006, of whom seven persons were convicted of trafficking in children. Among the 173 convicted, 67 persons were sentenced to imprisonment, 59 persons were fined, seven were acquitted, and for the others the penalties were either suspended or lifted based on a general pardon.<sup>1539</sup>

639. *However, the Committee has noted cases in which, despite possessing the required legislation, certain types of worst forms of child labour remain an issue of concern in practice because the penalties which are provided are not effectively enforced. As discussed in the various thematic sections, this can be explained by a number of reasons, including a lack of capacity of law enforcement agencies, failure to indict persons found guilty, the complicity of government officials, or the lack of a close relationship between the public prosecution services and the labour inspectorate.*<sup>1540</sup> *The Committee is of the firm view that the best legislation only takes on real value when it is applied. Whatever the severity of the penalties laid down, they will only be effective if they are applied in practice, which requires measures so that they can be brought to the attention of the judicial and administrative authorities, and for these authorities to be strongly encouraged to apply such penalties.*

## Statistical information

### *Measuring the nature, extent and trends of the worst forms of child labour*

#### Sources of statistical information

640. The main sources of statistical information on the nature, extent and trends of the worst forms of child labour are provided by child labour or labour force surveys or rapid assessment surveys (RAs)<sup>1541</sup> and studies.

641. Several countries have included a modular indicator on child labour in their national household or labour force surveys conducted by national offices for statistics in order to satisfy the requirements for information on estimates and the incidence of child labour.<sup>1542</sup> Moreover, national surveys on child labour have been carried out in a considerable number of countries,<sup>1543</sup> and several countries plan to conduct national

<sup>1539</sup> Republic of Moldova – CEACR, direct request, 2008.

<sup>1540</sup> See, for example, Bangladesh – CEACR, observation, 2011; Benin – CEACR, direct request, 2009; Burkina Faso – CEACR, observation, 2009; China – CEACR, observation, 2011; Côte d'Ivoire – CEACR, observation, 2011; Czech Republic – CEACR, direct request, 2011; Dominican Republic – CEACR, observation, 2011; Estonia – CEACR, direct request, 2011; Islamic Republic of Iran – CEACR, direct request, 2011; Jamaica – CEACR, observation, 2011; Jordan – CEACR, direct request, 2011; Kazakhstan – CEACR, direct request, 2011; Malaysia – CEACR, observation, 2010; Mongolia – CEACR, direct request, 2010; Niger – CEACR, observation, 2008; Paraguay – CEACR, observation, 2011; Saint Lucia – CEACR, direct request, 2010; Saudi Arabia – CEACR, observation, 2010; Senegal – CEACR, observation, 2011; Slovakia – CEACR, direct request, 2011; Sudan – CEACR, observation, 2010; Suriname – CEACR, direct request, 2010; Thailand – CEACR, observation, 2011; United Arab Emirates – CEACR, observation, 2010; Uzbekistan – CEACR, observation, 2011; and Bolivarian Republic of Venezuela – CEACR, observation, 2011.

<sup>1541</sup> For an explanation of the rapid assessment methodology see: *Child labour statistics*, Report III, 18th International Conference of Labour Statisticians, Geneva, 2008, paras 125–126.

<sup>1542</sup> See, for example, Dominican Republic – CEACR, direct request, 2011; Mexico – CEACR, direct request, 2011; and Nigeria – CEACR, direct request, 2006.

<sup>1543</sup> See, for example, Benin – CEACR, direct request, 2011; Plurinational State of Bolivia – CEACR, direct request, 2009; Ecuador – CEACR, direct request, 2011; Indonesia – CEACR, direct request, 2011; Mali – CEACR, direct request, 2010; Namibia – CEACR, direct request, 2010; Nigeria – CEACR, direct request, 2006; Panama – CEACR, direct request, 2011; Turkey – CEACR, direct request, 2010; and Zambia – CEACR, direct request, 2010.

surveys on child labour in the very near future. These include, for example, *Kenya*, *Kyrgyzstan*, *Chile* and *Panama* (second surveys).<sup>1544</sup> However, in certain cases, although the Government had indicated that a national survey on child labour was planned, it has not yet been carried out.<sup>1545</sup> In these cases, the Committee strongly encourages the governments concerned to take the necessary measures to ensure that such a survey is undertaken in the very near future.

642. The Committee has noted that studies or research on a particular aspect of the worst forms of child labour have also been undertaken in some countries. For example, in the *Central African Republic*, a study on the abuse, sexual exploitation and trafficking of children was carried out in 2005.<sup>1546</sup> The Committee has also noted the results of a study on street children commissioned in 2002 by the Child Development Agency in *Jamaica*.<sup>1547</sup> It has also observed that upcoming studies or research on child labour are planned in the near future in several countries such as *Fiji*, *Iraq* and *Peru*.<sup>1548</sup>

643. The ILO–IPEC SIMPOC programme has played an important role in assisting member States in the collection, documentation, processing and analysis of child labour data. Indeed, according to the Global Report of 2010, SIMPOC has provided technical assistance to more than 60 countries and has supported more than 300 child labour surveys, mainly carried out in Latin America and sub-Saharan Africa, of which 66 were national in scope.<sup>1549</sup>

#### Information on the implementation of provisions prohibiting the worst forms of child labour

644. Information on the number and nature of the infringements reported, investigations, prosecutions, convictions and penalties applied serves both to measure the number of child victims of the worst forms of child labour and the effective implementation and enforcement of the national provisions giving effect to the Convention. A non-negligible number of member States have provided detailed statistical information on crimes relating to the worst forms of child labour, and particularly on the trafficking and commercial sexual exploitation of children.<sup>1550</sup> Nonetheless, data relating to cases of trafficking and prostitution do not always indicate whether victims under the age of 18 are involved.<sup>1551</sup> The Committee has accordingly asked the governments concerned to specify how many of the cases reported were related to children under 18 years of age.<sup>1552</sup> There is also a need for the disaggregation of data to ensure more transparency.

<sup>1544</sup> See *Chile* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2011.

<sup>1545</sup> See, for example, *Trinidad and Tobago* – CEACR, direct request, 2011.

<sup>1546</sup> See *Central African Republic* – CEACR, direct request, 2010.

<sup>1547</sup> See *Jamaica* – CEACR, direct request, 2011.

<sup>1548</sup> See *Fiji* – CEACR, direct request, 2010 (research on the commercial sexual exploitation of children, on street children and on children who live in informal settlements and squatter communities); *Iraq* – CEACR, direct request, 2011 (a study on child labour and hazardous working conditions of children); and *Peru* – CEACR, direct request, 2010 (a study on the situation of indigenous peoples and work by indigenous children).

<sup>1549</sup> *Accelerating action against child labour*, op. cit., para. 106.

<sup>1550</sup> See, for example, *Belarus* – CEACR, direct request, 2011; *Belgium* – CEACR, direct request, 2011; *Czech Republic* – CEACR, direct request, 2011; *Estonia* – CEACR, direct request, 2011; *Greece* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; *Serbia* – CEACR, direct request, 2010; and *Sweden* – CEACR, direct request, 2010.

<sup>1551</sup> See, for example, *Slovakia* – CEACR, direct request, 2011; and *Switzerland* – CEACR, direct request, 2010.

<sup>1552</sup> See, for example, *Singapore* – CEACR, direct request, 2010; and *Slovenia* – CEACR, direct request, 2010.

645. Among the difficulties observed in providing statistical information on the use of children in the worst forms of child labour, the Committee has observed that such estimates remain difficult to obtain due to the hidden nature of some types of work, for example, work in the informal economy, private homes, family enterprises and illicit activities.<sup>1553</sup> In several instances, although member States have provided statistics on child labour, the data do not capture the extent and characteristics of the worst forms of child labour, other than hazardous work, and therefore do not provide information on the number of child victims of the worst forms of child labour.<sup>1554</sup>

646. For this reason, many RAs completed with the help of SIMPOC have assisted countries in obtaining information on invisible forms of child labour.<sup>1555</sup> For example, the Committee has noted that RAs have been carried out on the involvement of children in illicit drug-related activities in *Philippines* and *Thailand*, on the informal employment of children in urban and rural areas in *Uzbekistan* and on child domestic workers in *Ethiopia*.<sup>1556</sup>

647. *The Committee has nonetheless expressed concern at the lack of the statistical information available on the worst forms of child labour in certain countries on several occasions.*<sup>1557</sup> *It therefore recalls the importance of providing information on the manner in which the Convention is applied in practice and emphasizes the necessity to ensure that sufficient and up-to-date data on the prevalence of the worst forms of child labour are made available to determine the magnitude of child labour and, in particular, its worst forms.*

### Main findings

648. Among the positive trends observed, the Committee has noted that the incidence of the worst forms of child labour appears to have declined in some countries, such as *Latvia*, *Oman* and *Viet Nam*.<sup>1558</sup> It has nevertheless observed that the number of children involved in the worst forms of child labour has increased in other countries over the past few years,<sup>1559</sup> and has expressed its concern on numerous occasions at the significant number of child victims of the worst forms of child labour,<sup>1560</sup> and particularly child

<sup>1553</sup> *A future without child labour*, ILC, 90th Session, Geneva, 2002, para. 42.

<sup>1554</sup> See, for example, *Argentina* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Dominican Republic* – CEACR, direct request, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2011; and *Sudan* – CEACR, direct request, 2010.

<sup>1555</sup> See, for example, *Namibia* – CEACR, direct request, 2010; *Tajikistan* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, direct request, 2011.

<sup>1556</sup> See *Ethiopia* – CEACR, direct request, 2011; *Philippines* – CEACR, direct request, 2010; *Thailand* – CEACR, observation, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

<sup>1557</sup> See, for example, *Armenia* – CEACR, direct request, 2011; *Congo* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Equatorial Guinea* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2011; *Haiti* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; *Libya* – CEACR, direct request, 2011; *Seychelles* – CEACR, direct request, 2008; and *Uzbekistan* – CEACR, direct request, 2011.

<sup>1558</sup> See, for example, *Latvia* – CEACR, direct request, 2010; *Oman* – CEACR, direct request, 2008; and *Viet Nam* – CEACR, direct request, 2010.

<sup>1559</sup> For example, in the *Islamic Republic of Iran* the number of children engaged in the worst forms of child labour increased by 35 per cent from 2004 to 2005. See *Islamic Republic of Iran* – CEACR, direct request, 2011. In *Colombia*, the Committee has noted that along with a boost in tourism, the commercial sexual exploitation of children has increased alarmingly, especially in touristic areas, such as the Caribbean. See *Colombia* – CEACR, direct request, 2011.

<sup>1560</sup> See, for example, *Mexico* – CEACR, direct request, 2011; and *Uganda* – CEACR, direct request, 2010.

victims of trafficking and commercial sexual exploitation,<sup>1561</sup> children forcibly recruited for use in armed conflict<sup>1562</sup> and children working in hazardous conditions.<sup>1563</sup>

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<sup>1561</sup> See, for example, *Lao People's Democratic Republic* – CEACR, direct request, 2010; and *Liberia* – CEACR, direct request, 2011.

<sup>1562</sup> See, for example, *Central African Republic* – CEACR, observation, 2010; and *Democratic Republic of the Congo* – CEACR, observation, 2011.

<sup>1563</sup> See, for example, *Botswana* – CEACR, direct request, 2011; and *Côte d'Ivoire* – CEACR, observation, 2011.

## Part V. Equality, non-discrimination and equal remuneration

### Chapter 1

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#### Introduction

649. There is considerable awareness and acceptance of the importance of equality and non-discrimination, as these concepts are at the heart of all human rights discourse. Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all women and men are entitled, in all countries and in all societies. It impacts on the enjoyment of all other rights. It has been a principal objective of the ILO since it was founded in 1919. The Treaty of Versailles, which incorporates the original ILO Constitution, sets out nine principles “of special and urgent importance”, which include “The principle that men and women should receive equal remuneration for work of equal value” and that “standards set by law in each country with respect to conditions of labour should have due regard to the equitable economic treatment of all workers ...”.<sup>1564</sup> The Declaration of Philadelphia, adopted in 1944, which forms part of the ILO Constitution, affirms that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.<sup>1565</sup> These principles have been further defined, expanded upon and enshrined in binding international instruments.

650. The first fundamental instruments adopted with the specific objective of promoting equality and eliminating discrimination were the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951. It was recognized from the start that equal remuneration between men and women could not be achieved without the elimination of discrimination in all areas of employment and that other grounds of discrimination should also be the subject of prohibition. Therefore, seven years later, the Conference adopted the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, as the first comprehensive instruments dealing specifically with equality and non-discrimination in respect of employment and occupation. However, other ILO standards expressly prohibiting discriminatory measures in specific areas and for specific groups of workers have been adopted before and after these instruments.<sup>1566</sup>

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<sup>1564</sup> Treaty of Versailles, Part XIII, 1919, Article 427. Other fundamental principles set out in this Article include the right of association and the abolition of child labour.

<sup>1565</sup> ILO Constitution, Annex (“Declaration of Philadelphia”, 1944).

<sup>1566</sup> *Equality in employment and occupation*, General Survey of the reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 75th Session,



651. Conventions Nos 100 and 111 are mutually reinforcing. Convention No. 100 addresses equality specifically between men and women and concerns remuneration; Convention No. 111 addresses a wider range of grounds, and all aspects of employment and occupation. The objectives of Conventions Nos 100 and 111 are interlinked: the application to all workers of equal remuneration for men and women for work of equal value (Convention No. 100);<sup>1567</sup> the elimination of all discrimination, in respect of all aspects of employment and occupation, through the concrete development of equality of opportunity and treatment (Convention No. 111).<sup>1568</sup>

652. The adoption of Convention No. 100 and Recommendation No. 90 after the Second World War was not a coincidence. Women had been on the front line of production during the war in many countries, and the myth that they could not do certain jobs or were not as productive as men could no longer be sustained.<sup>1569</sup> Providing for equality in remuneration for women and men was an important first step in moving towards wider equality in society, with pay differentials between women and men being one of the most tangible and measurable manifestations of discrimination. Consideration of the multiple and complex links between the principle of equal remuneration and the position and status of men and women more generally in employment and society led to the adoption of Recommendation No. 90 at the same time as Convention No. 100.<sup>1570</sup> Convention No. 100 was the first ILO Convention to promote the principle of equality between men and women, and it changed the future orientation of the ILO's activities with respect to women workers.<sup>1571</sup>

653. Recommendation No. 90 acknowledges that action to remedy wage inequality must be addressed in a broader context. Some of what is in Recommendation No. 90 became central to Convention No. 111 and its accompanying Recommendation (also No. 111).<sup>1572</sup> Linking Convention No. 100 with Convention No. 111 is of particular importance, as equal remuneration for work of equal value cannot be achieved in a general context of inequality. To overcome obstacles in applying the Convention, measures are needed as set out in other Conventions, including on equal opportunities and reconciling work and family responsibilities.<sup>1573</sup>

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Geneva, 1988, para. 3, and *Equality in employment and occupation*, Special Survey on equality in employment and occupation, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 83rd Session, Geneva, 1996, para. 243. See also the Home Work Convention, 1996 (No. 177); the Private Employment Agencies Convention, 1997 (No. 181); the Maternity Protection Convention, 2000 (No. 183); the Maritime Labour Convention, 2006; the Domestic Workers Convention, 2011 (No. 189); and the HIV and AIDS Recommendation, 2010 (No. 200).

<sup>1567</sup> Art. 2, Convention No. 100; *Equal remuneration*, General Survey of the reports on the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 72nd Session, Geneva, 1986, para. 246.

<sup>1568</sup> Art. 2, Convention No. 111.

<sup>1569</sup> The role of women during the war was highlighted by a number of delegates during the discussion of the Convention in 1951: See, for example: *Record of Proceedings*, ILC, 34th Session, Geneva, 1951, pp. 337, 340, 348; see also *Equal remuneration for men and women for work of equal value*, Report V(2), ILC, 33rd Session, Geneva, 1950, p. 53.

<sup>1570</sup> General Survey, 1986, para. 4.

<sup>1571</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, Report III (1A), 89th Session, Geneva, 2001, p. 18.

<sup>1572</sup> In particular *Para. 6(a), (b) and (d)* of Recommendation No. 90, relating to vocational guidance and training, and equality of access to occupations and posts.

<sup>1573</sup> General Survey, 1986, pp. 187–189; the Workers with Family Responsibilities Convention, 1981 (No. 156).

654. The 1958 instruments were designed to promote the application, in all spheres of employment and occupation, of the general principles of equality, dignity and freedom. In providing a specific but broad definition of what constitutes discrimination, Convention No. 111 places the general principle of equality and non-discrimination in the context of the world of work, addressing all forms of discrimination in employment and occupation on the basis of at least seven grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin, with the possibility of extending protection to address discrimination on the basis of other criteria. Additional grounds that have been added by a number of countries include age, health, disability, HIV and AIDS, employment status, nationality and sexual orientation.<sup>1574</sup>

655. Both Conventions highlight the importance of tripartism. They set out broad requirements of active “cooperation” with employers’ and workers’ organizations, thus directly involving these organizations in the implementation of the Conventions. Under Convention No. 100, Members are to cooperate with employers’ and workers’ organizations in giving effect to the provisions of the Convention.<sup>1575</sup> Convention No. 111 provides that, with respect to the national equality policy required under the Convention, Members are to seek the cooperation of employers’ and workers’ organizations, as well as “other appropriate bodies” in promoting the acceptance and observance of this policy.<sup>1576</sup> Cooperation goes beyond “consultation”, and includes work performed jointly.<sup>1577</sup> There are also provisions on consultation with employers’ and workers’ organizations in Convention No. 111 and in Recommendation No. 90, requiring more than merely providing information, but ensuring that the views of those concerned are taken into account by the government before decisions are taken.<sup>1578</sup> Recommendation No. 90 calls for the establishment of job evaluation “in agreement with the employers’ and workers’ organisations concerned”.<sup>1579</sup> ***Conventions Nos 100 and 111 both acknowledge that employers’ and workers’ organizations must have a key role in their implementation if they are to be effective. Where there is an absence of genuine social dialogue in a country, the application of Conventions Nos 100 and 111 is seriously hindered.***<sup>1580</sup>

656. In the 25 years since the last General Survey on equal remuneration, and even in the 15 years since the Special Survey on Convention No. 111, there have been many advances in the understanding and implementation of the Conventions.<sup>1581</sup> However, chronic difficulties in their application persist. This part of the Survey highlights, in the light of the information and specific questions that have been examined since the previous Surveys, the broad trends that are emerging as to some of the measures taken, the obstacles encountered and the progress achieved in implementing the principle of non-discrimination and equality of opportunity and treatment in employment and occupation.

<sup>1574</sup> See paras 806–825 below.

<sup>1575</sup> Art. 4, Convention No. 100.

<sup>1576</sup> Art. 3(a), Convention No. 111. See also Recommendation No. 111, Para. 4(9).

<sup>1577</sup> General Survey, 1988, para. 186.

<sup>1578</sup> Convention No. 111, Arts 1(1)(b) and 5(2); Recommendation No. 90, Paras 1, 2 and 4.

<sup>1579</sup> Para. 5, Recommendation No. 90.

<sup>1580</sup> *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 98th Session, Geneva, 2009, and 99th Session, 2010, conclusions, Convention No. 100, *Mauritania*, 2009, and *Islamic Republic of Iran*, Convention No. 111, 2010.

<sup>1581</sup> Three General Surveys on equal remuneration have been carried out in the past, most recently the General Survey, 1986, op. cit. Four General Surveys have also been carried out on Convention No. 111, including most recently the General Survey, 1988, op. cit., and the Special Survey, 1996, op. cit.

## Chapter 2

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

#### Introduction

657. The application of Convention No. 100 involves examining equality at two levels: first, at the level of the job (is the work of equal value?), and then at the level of the remuneration received (is the remuneration equal?). Addressing both these aspects is essential to applying the Convention fully. Determining whether jobs are of equal value requires some method of measuring and comparing the relative value of different jobs, normally through objective job evaluation. Once there is a framework for equal remuneration for work of equal value, ensuring effective application, including through proactive measures, remains an ongoing process. Examining the gender pay gap and its evolution provides an indicator of the practical effect of legislation, policies and practices aimed at applying the principle of equal remuneration for men and women for work of equal value.<sup>1582</sup> In discussing equal remuneration, the overall societal context of equality and non-discrimination cannot be ignored, and needs to be addressed if the principle of the Convention is to truly take root. These aspects, as they have progressed over recent years, are examined in more detail below.

#### Scope of the Convention and methods of application

##### Scope of application

658. No provision in either Convention No. 100 or Convention No. 111 limits their scope as regards individuals or branches of activity. Convention No. 100 applies to “all workers”, and as affirmed in previous General Surveys, the rule must be that the principle of equal remuneration for men and women shall apply everywhere.<sup>1583</sup> When the Convention was being discussed, a proposal to add a specific reference to “all wage earners and salaried employees irrespective of the branch of economic activity in which they are employed” was opposed on the ground that the text already covers “all workers”, and that any enumeration could result in omissions.<sup>1584</sup> ***There are no exclusions***

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<sup>1582</sup> See ILC, Committee on the Application of Standards, conclusions, *United Kingdom*, Convention No. 100, 2006. Recommendation No. 90 refers to the progressive application of the principle of the Convention by measures such as decreasing the differentials between rates of remuneration for men and women for work of equal value (*Para. 4(a)*).

<sup>1583</sup> General Survey, 1986, para. 18; *Equal remuneration*, General Survey of the reports relating to the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 80th Session, Geneva, 1975, para. 170.

<sup>1584</sup> *Record of Proceedings*, ILC, 34th Session, Geneva, 1951, p. 615. See also: *Equal remuneration for men and women workers for work of equal value*, Report VII(2), ILC, 34th Session, Geneva, 1951, pp. 57–58.

*permitted under Convention No 100: it applies to all workers, both nationals and non-nationals, in all sectors of activity, in the public and the private sectors, and in the formal and informal economy.*

## Methods of application: Flexibility and impact

659. The obligation of the State in ratifying Convention No. 100 is to “promote” the application of the principle of equal remuneration for men and women for work of equal value by means appropriate to the methods in operation for determining rates of remuneration; and to “ensure” its application to all workers, insofar as this is consistent with such methods.<sup>1585</sup> The Convention provides flexibility in terms of how this can be achieved,<sup>1586</sup> but allows no compromise in the objective to be pursued.<sup>1587</sup> Various means by which the principle of the Convention may be applied are enumerated in the Convention, namely national laws or regulations; legally established or recognized machinery for wage determination; collective agreements between employers and workers; or a combination of these means.<sup>1588</sup> Recommendation No. 90 also refers to ensuring the application of the principle, as rapidly as possible, with respect to work executed under the terms of public contracts.<sup>1589</sup> The intention was to recognize all methods of determining rates of remuneration for the purpose of applying the Convention.<sup>1590</sup>

660. *Legislation.* National laws or regulations are specified in *Article 2(2)(a)* of the Convention as a method of applying the principle of the Convention, and Recommendation No. 90 supports legal enactment for the general application of the principle of equal remuneration for men and women for work of equal value.<sup>1591</sup> The majority of countries have introduced either general legislative provisions on equality and non-discrimination with respect to wages, or specifically on equal remuneration. These are normally found in the labour law, equality legislation or in some instances in special legislation on equal remuneration.<sup>1592</sup>

661. *Wage determination machinery.* The reference to “legally established or recognised machinery for wage determination” was added to the text (*Article 2(2)(b)*) with a view to ensuring that, among others, tribunals and wage boards would be recognized.<sup>1593</sup> State conciliation and arbitration systems involved in wage fixing, as well as minimum wage-fixing machinery are also included.<sup>1594</sup> In recent years, the important role of minimum wages in the context of wage determination machinery has been a particular focus of the Committee, as the setting of minimum wages is an important means by which the Convention is applied.<sup>1595</sup>

<sup>1585</sup> *Art. 2(1).*

<sup>1586</sup> See General Survey, 1986, para. 246.

<sup>1587</sup> *ibid.*, para. 30.

<sup>1588</sup> *Art. 2(2).*

<sup>1589</sup> *Para. 2(c).*

<sup>1590</sup> *Equal remuneration for men and women workers for work of equal value*, 1951, op. cit., p. 48.

<sup>1591</sup> *Para. 3(1).*

<sup>1592</sup> See paras 676–679 below.

<sup>1593</sup> *Equal remuneration for men and women workers for work of equal value*, 1951, op. cit., p. 48.

<sup>1594</sup> General Survey, 1986, para. 216.

<sup>1595</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), ILC, 89th Session, Geneva, 2001, General Report, para. 47.

662. *Collective agreements.* As a principal means of determining terms and conditions of employment in a number of countries, it was foreseen that collective agreements, whether at national, sectoral or enterprise level, would be a key means of implementing the Convention. *Article 2(2)(c)* refers specifically to “collective agreements between employers and workers” as a means of applying the principle of the Convention. *Article 4* also foresees this role, in the context of cooperation with employers’ and workers’ organizations in giving effect to the Convention. Collective bargaining has been identified as an important factor in reducing the gender pay gap,<sup>1596</sup> and can therefore be key in the implementation of the Convention. Legislation often interacts with collective agreements in requiring that they include provisions related to equal remuneration for men and women, to address wage discrimination, or declaring null and void provisions in contracts or collective agreements that are in violation of the principle of equal remuneration.<sup>1597</sup> Legislation may acknowledge collective agreements as a principal source of determining rates of remuneration.<sup>1598</sup> There are also legislative provisions for extending collective agreements to other employers.<sup>1599</sup>

### Difficulties of application concerning scope of the Convention

663. While some countries have moved to more detailed equal pay or anti-discrimination laws, most continue to deal with equal remuneration issues in the context of the general labour or employment law. As a result, the exclusion of certain groups from the scope of labour law, including civil servants, domestic workers, agricultural workers, workers in export processing zones (EPZs), casual workers, informal economy workers, non-citizens and migrant workers, often leads to difficulties in the application of Convention No. 100.<sup>1600</sup> The scope is also sometimes limited in terms of size of the enterprise.<sup>1601</sup>

<sup>1596</sup> See S. Hayter and B. Weinberg (ed.): “Mind the gap: Collective bargaining and wage inequality”, in *The role of collective bargaining in the global economy: Negotiating for social justice* (Geneva, ILO, 2011).

<sup>1597</sup> See, for example, *Austria* – CEACR, direct request, 2010; *Bosnia and Herzegovina* – CEACR, observation, 2006; *Chad* – CEACR, direct request, 2009; *Fiji* – CEACR, observation, 2008; *Haiti* – CEACR, direct request, 2010; *Indonesia* – CEACR, observation, 2007; *Kenya* – CEACR, direct request, 2009; *Nicaragua* – CEACR, direct request, 2010; *Slovakia* – CEACR, observation, 2006; and *Ukraine* – CEACR, observation, 2011. See also General Survey, 1986, paras 75, 171–173 and 226–228.

<sup>1598</sup> See, for example, *Armenia*, Labour Code of 2004; *Gabon*, Labour Code of 1994; *Kazakhstan*, Labour Code of 2007; *Montenegro*, Labour Law No. 49/08; *The former Yugoslav Republic of Macedonia*, Labour Relations Law, 2005; *Turkmenistan* – CEACR, direct request, 2011: Labour Code of 2009; and *Uzbekistan* – CEACR, direct request, 2008: Labour Code of 1995.

<sup>1599</sup> *Belgium* – CEACR, direct request, 2011: Collective agreement No. 25ter of 9 July 2008, on equal remuneration between men and women workers, was made compulsory by Royal Order of 28 September 2008. See also *Slovakia* – CEACR, direct request, 2011 (Act No. 2/1991 Coll. on collective bargaining, as amended in 2007).

<sup>1600</sup> See, for example, *Cambodia* – CEACR, direct request, 2011 (judges, civil servants, personnel of the police, the army, the military police, employees in air and maritime transportation, domestic and household workers); *Kenya* – CEACR, direct request, 2009 (the police, prison service, armed forces, national youth service and employers’ dependants, limited categories of employees in respect of whom special problems of a substantial nature arise, as well as categories of employed persons whose terms and conditions of employment are governed by special arrangements); *Syrian Arab Republic*, direct request, 2011 (workers subject to the Civil Servants Basic Law No. 50/2004, workers subject to the Agricultural Relations Law, family members of the employers actually supported by the employer, domestic servants and similar categories, casual workers, part-time workers whose hours of work do not exceed two hours per day and workers in charity associations and organizations); and *Yemen* – CEACR, direct request, 2011 (inter alia, domestic workers, agricultural workers, casual workers). In its report under art. 19 of the Constitution, the Government of Timor-Leste indicates that the Labour Code excludes public servants, family and small-scale holdings and workplaces granted a temporary exemption.

<sup>1601</sup> For example in the *Republic of Korea*, the Enforcement Decree of the Equal Employment Act of 1987 excludes businesses with fewer than five workers from the application of the equal pay provisions of this Act.

664. Many of the excluded groups and sectors are characterized by a high proportion of women and particularly low wages, including domestic workers, agricultural workers and informal economy workers.<sup>1602</sup> These workers are also often excluded from minimum wage fixing, denied a range of benefits and allowances, and may be relatively isolated from other workers. They are often not organized into associations or unions, thus having little collective bargaining power. Particularly in the agricultural sector, there are significant wage disparities between men and women, giving rise to a large number of unequal pay claims,<sup>1603</sup> as well as problems of wage arrears.<sup>1604</sup> Agriculture is also the sector where historically different wage rates were set for women and men in a number of countries.

665. The informal economy also gives rise to particular issues of application. While the principle of the Convention should apply to all workers, including those in the informal economy,<sup>1605</sup> application in both law and practice remains a challenge in this context. Addressing the low wages of women in the informal economy has been an objective of some States, linked to poverty alleviation. The role of the labour inspection services is of particular importance in this area, and generally remains weak.<sup>1606</sup> As a first step towards addressing the issue of equal remuneration between men and women for work of equal value in the informal economy, particularly where there is a large informal economy, the Committee has asked governments to provide information on the extent of the pay differentials and to examine the underlying factors perpetuating pay differentials between men and women in the informal economy, with a view to being able to then develop and implement appropriate measures to promote the principle.<sup>1607</sup>

666. The Convention clearly applies to the public sector. This is emphasized by Recommendation No. 90, which cites as a first measure to implement the Convention the application of equal remuneration for men and women for work of equal value in all occupations “in which rates of remuneration are subject to statutory regulation or public control”.<sup>1608</sup> This is due to the fact that the State’s wage policy has a strong influence on the private sector, and the State also has an important role in setting an example in pursuing a policy that can serve as a pattern. While in many countries laws embodying

<sup>1602</sup> It is estimated that 83 per cent of domestic workers in the world are women: see *Global and regional estimates on domestic workers*, Domestic Work Policy Brief 4 (Geneva, ILO, 2011); see also paras 707 and 795–797 below. Regarding agricultural workers, see *Egypt* – CEACR, direct request, 2005; *Mozambique* – CEACR, direct request, 2003; *Tajikistan* – CEACR, direct request, 2011; *Uganda* – CEACR, direct request, 2011; and *Zambia* – CEACR, direct request, 2011.

<sup>1603</sup> See *Tunisia* – CEACR, direct requests, 2007 and 2011; and *Yemen* – CEACR, direct request, 2010.

<sup>1604</sup> See *Tajikistan* – CEACR, direct request, 2011.

<sup>1605</sup> For an analysis of the rights gap in the informal economy, see *Decent work in the informal economy*, ILC, 90th Session, Report VI, Geneva, 2002, and the Conclusions concerning decent work and the informal economy adopted by the Conference in 2002. See also ILC, Committee on the Application of Standards, conclusions, Convention No. 100, *Mauritania*, 2009.

<sup>1606</sup> See *Mongolia* – CEACR, direct request, 2006; *Morocco* – CEACR, observation, 2009; and *Nepal* – CEACR, direct request, 2012.

<sup>1607</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; *Burundi* – CEACR, direct request, 2009; and *India* – CEACR, observation, 2006.

<sup>1608</sup> *Para. 2.* According to *Para. 1* of Recommendation No. 90, the application of the principle of equal remuneration for men and women for work of equal value should be ensured with respect to “employees of central government departments or agencies” and encouraged with respect to “employees of state, provincial or local government departments or agencies, where these have jurisdiction over rates of remuneration”. In *Romania*, for example, the Framework Act No. 330 on the unitary pay system for public sector employees expressly stipulates that the principle of equal remuneration for work of equal value is one of the fundamental precepts of the pay system: CEACR, direct request, 2012.

the principle of equal remuneration specifically cover the public sector, or do not exclude them, there may still be exclusions of certain groups of workers in the public service, such as state or local authorities, or public servants in general.<sup>1609</sup> Public servants may be covered by special legislation, but this may not refer at all to equal remuneration,<sup>1610</sup> or may address only non-discrimination based on sex generally,<sup>1611</sup> or be limited to equal remuneration for equal, the same or similar work.<sup>1612</sup> Occupational segregation, with women in lower paying occupations in the public service, as well as gender wage disparities, remain concerns.<sup>1613</sup>

667. Where specific groups or sectors are excluded from the general labour law, it needs to be determined whether special laws or regulations apply to them, and whether they provide the same level of rights and protection as the general provisions.<sup>1614</sup> Where groups are excluded from the labour law and there are no specific provisions on equal remuneration for men and women for work of equal value in the law governing their employment, they may still have such rights pursuant to gender equality or anti-discrimination laws.<sup>1615</sup> Where there is no legislation at all covering certain groups regarding equal remuneration and non-discrimination, it needs to be shown how such rights are ensured for these groups in practice. However, in the absence of a clear legislative framework supporting equal remuneration for men and women for work of equal value, it has been difficult for countries to demonstrate that this right has been ensured in practice. Governments should endeavour to extend the application of the principle of the Convention to all workers.<sup>1616</sup>

## Thematic issues

### Gender pay gap

668. Pay differentials remain one of the most persistent forms of inequality between women and men.<sup>1617</sup> Although explicit policies of providing lower pay for women have for the most part been relegated to the past, the gender pay gap remains one of the most

<sup>1609</sup> General Survey, 1986, para. 203.

<sup>1610</sup> For example, *Fiji*, Public Service Act, 1999; *Lesotho*, Public Service Act, 2005 and Public Service Regulations, 2008; *Montenegro*, Law on civil servants and state employees No. 27/04; *Nepal*, Civil Service Act, 2049 (1993); *Rwanda*, Act No. 22/2002 on civil servants; and *United Republic of Tanzania*, Public Service Act, 2002 (No. 8).

<sup>1611</sup> For example, *Algeria*, General Public Service Regulation (Act No. 06-03 of 2006); *Armenia*, Act on remuneration of civil servants of 2002; *Belarus* Public Service Act, 2003; *Burundi*, Act No. 1/28 of 2006 on civil servants; *Chad*, Act No. 017/PR/2001 of 2001 on Civil Service; *Madagascar*, Act No. 2003-011 on civil servants; *Mali*, Act No. 02-053 of 2002 on civil servants; *Slovakia*, Public Service Act (Act No. 313/2001) and the Civil Service Act (Act No. 312/2001).

<sup>1612</sup> For example, *Iceland* – Act No. 70 of 1996 on the rights and duties of civil servants refers to equal pay between men and women for “equivalent work”.

<sup>1613</sup> For example, *Benin* – CEACR, direct request, 2008; *Honduras* – CEACR, observation, 2010; *Jordan* – CEACR, direct request, 2011; and *Republic of Moldova*, direct request, 2011.

<sup>1614</sup> See *Eritrea* – CEACR, direct request, 2007 (civil servants); *Jordan* – CEACR, direct request, 2011 (agricultural workers, domestic workers, gardeners, cooks); *Morocco* – CEACR, direct request, 2005 (domestic workers); and *Turkey* – CEACR, direct request, 2011 (agricultural workers).

<sup>1615</sup> See, for example, *Iceland*, Act on Equal Status and Equal Rights of Women and Men of 2008; *Malta*, Equal Treatment in Employment Regulations of 2004; *Norway*, Gender Equality Act and Anti-Discrimination Act of 2005.

<sup>1616</sup> See General Survey, 1986, para. 99.

<sup>1617</sup> CEACR, General Report, 2001, para. 38.

obvious examples of structural gender discrimination.<sup>1618</sup> The gender pay gap varies from country to country, and between different sectors within a country. Globally, women earn approximately 77.1 per cent of what men earn (a pay gap of 22.9 per cent) though in some countries women earn considerably less.<sup>1619</sup> If wages of part-time workers are included in the calculation, the gap can increase to much higher levels.<sup>1620</sup>

669. Many countries have made progress in reducing the pay gap, though in others it has stagnated for many years, or even increased. Even where gender pay differences are narrowing, they are doing so extremely slowly: at the current rate it is estimated that another 75 years will be needed to bridge the gap.<sup>1621</sup> *The continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations, take more proactive measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value.*<sup>1622</sup> *Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration.*<sup>1623</sup>

### Promote and ensure application

670. As noted above, while the Convention is flexible regarding the measures to be used and the timing in achieving its objective, it allows no compromise in the objective to be pursued.<sup>1624</sup> Effective measures need to be taken in order to accomplish real progress in attaining the Convention's objective of equal remuneration for men and women for work of equal value. The State, therefore, is obliged to ensure the application of the principle of the Convention principally in the following situations: where the State is the employer or otherwise controls business; where the State is in a position to intervene in the wage-fixing process, for example where the rates of remuneration are subject to public control or statutory regulation, or where there is specific legislation on the issue, or relating to equality and non-discrimination with respect to remuneration.<sup>1625</sup> In promoting the application of the principle where it is not in a position to ensure its application, the State must take vigorous and proactive measures and must act in good faith.<sup>1626</sup>

671. It is acknowledged that the implementation of the Convention may need to be achieved over time.<sup>1627</sup> However, given that the right to equal remuneration for work of equal value is a fundamental right, the period for the full application of the Convention should be as short as possible, with deadlines being fixed for the attainment of specific

<sup>1618</sup> See para. 745 below.

<sup>1619</sup> *A new era of social justice*, Report of the Director-General, Report 1(A), ILC, 100th Session, Geneva, 2011, p. 15. See also *Global wage report 2010/11: Wage policies in a time of crisis* (Geneva, ILO, 2011).

<sup>1620</sup> See, for example, *Austria* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2011; and *United Kingdom* – CEACR, observation, 2007.

<sup>1621</sup> ILO: *A new era of social justice*, op. cit., pp. 11 and 15.

<sup>1622</sup> CEACR, General Report, 2001, para. 49.

<sup>1623</sup> For further details, see paras 887–891 below.

<sup>1624</sup> General Survey, 1986, para. 30.

<sup>1625</sup> *ibid.*, para. 25.

<sup>1626</sup> *ibid.*, para. 29.

<sup>1627</sup> See ILC, Committee on the Application of Standards, conclusions, Convention No. 100, *United Kingdom*, 2006.



objectives.<sup>1628</sup> The State cannot be passive in its approach to implementing the Convention, whether in ensuring or promoting its application. Application of both Conventions Nos 100 and 111 is an ongoing process requiring a continual cycle of assessment, action, monitoring, further assessment and adjustment, including to address new issues and difficulties.

### Equal value: The cornerstone of the Convention

672. While equal remuneration for men and women for work of equal value is a principle that is widely accepted, the scope of the concept and its application in practice have been more difficult to grasp and apply in some countries. Unequal remuneration is often due to subtle, chronic problems that are difficult to overcome without a clear understanding of the concepts and their relevance to the workplace and society in general. The Committee has noted that difficulties in applying the Convention in law and practice result in particular from a lack of understanding of the concept of “work of equal value”. As a result, the Committee issued a general observation to clarify the meaning of “work of equal value”.<sup>1629</sup>

**673. *The concept of “work of equal value” lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality.***<sup>1630</sup> *Due to historical attitudes and stereotypes regarding women’s aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (such as in caring professions) and others by men (such as in construction). Often “female jobs” are undervalued in comparison with work of equal value performed by men when determining wage rates.*<sup>1631</sup> *The concept of “work of equal value” is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for “equal”, “the same” or “similar” work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value.*<sup>1632</sup>

674. “Value” while not defined in the Convention, refers to the worth of a job for the purpose of computing remuneration.<sup>1633</sup> “Value” in the context of the Convention indicates that something other than market forces should be used to ensure the application of the principle, as market forces may be inherently gender-biased.<sup>1634</sup> *Article 1(b)* of the Convention states that the “term ‘equal remuneration for men and women workers for work of equal value’ refers to rates of remuneration established without discrimination based on sex”, clearly excluding any consideration related to the sex of the worker in determining value.

675. While *Article 1* indicates what cannot be considered in determining rates of remuneration, *Article 3* presupposes the use of appropriate techniques for objective job evaluation to determine value, comparing factors such as skill, effort, responsibilities and

<sup>1628</sup> See General Survey, 1975, para. 66: the Committee has indicated three to five years as the most generally accepted period.

<sup>1629</sup> CEACR, general observation, Convention No. 100, 2007, para. 3.

<sup>1630</sup> *ibid.*, para. 1.

<sup>1631</sup> *ibid.*, para. 2.

<sup>1632</sup> *ibid.*, para. 3.

<sup>1633</sup> CEACR, General Report, 2001, para. 42.

<sup>1634</sup> *ibid.*, paras 42–44.

working conditions.<sup>1635</sup> Comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men free from gender bias.<sup>1636</sup> The Committee recalls that the principle has been applied to compare the remuneration received by men and women engaged in different occupations, such as wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men).<sup>1637</sup>

### Legislation

676. Although the principle of the Convention is still not reflected at all in legislation in several countries,<sup>1638</sup> the Committee has been able to note progress in a number of countries in recent years, in all regions, in the adoption of legislation referring expressly to “work of equal value”, including *Australia, Bangladesh, Bosnia and Herzegovina, Croatia, Cyprus, Djibouti, Kenya, Malta, Peru, Poland, Republic of Moldova, Romania, Saudi Arabia, Slovenia, Togo, Turkey, United Kingdom (Gibraltar)* and *Zimbabwe*.<sup>1639</sup> The recent Constitutions of *Bolivia* and *Ecuador* also refer to “work of equal value”.<sup>1640</sup> The legal provisions regarding equal remuneration for work of equal value are primarily found in the labour law,<sup>1641</sup> while in some countries they are in specific legislation

<sup>1635</sup> CEACR, general observation, 2007, para. 5. Methods of comparing different jobs and determining value are discussed in more detail in paras 695–709 below.

<sup>1636</sup> *ibid.*, para. 5. See also *Canada* – CEACR, observation, 2011; *New Zealand* – CEACR, direct request, 2010, regarding comparing community support workers and health/therapy assistants in the context of a job evaluation exercise.

<sup>1637</sup> CEACR, general observation, 2007, para. 4. See also para. 678 below.

<sup>1638</sup> Such as *Barbados, Botswana, Gambia, Indonesia, Japan, Lebanon, Malaysia, Seychelles, Saint Kitts and Nevis, Trinidad and Tobago, Tunisia* and *Zambia*. In its report under art. 19 of the Constitution, the Government of Qatar indicates that there is no legislation on equal remuneration for work of equal value.

<sup>1639</sup> *Australia* – CEACR, observation, 2011 (Fair Work Act, 2009); *Bangladesh* – CEACR, observation, 2009 (Labour Act 2006); *Bosnia and Herzegovina* – CEACR, observation, 2006 (Law on Gender Equality, 2003 (No. 56/03)); *Croatia* – CEACR, direct request, 2011 (Gender Equality Act, 2008); *Cyprus* – CEACR, observation, 2004 (Act to provide equal pay between men and women for the same work or for work to which equal value is attributed); *Djibouti* – CEACR, observation, 2009 (Labour Code, 2006); *Kenya* – CEACR, observation, 2009 (Employment Act, 2007); *Malta* – CEACR, direct request, 2011 (Legal Notice 137 of 2007, amending the Equal Treatment in Employment Regulations, 2004); *Malta* – CEACR, observation, 2005 (Employment and Industrial Relations Act (No. 22), 2002); *Peru* – CEACR, observation, 2008 (Act No. 28938 respecting Equality of Opportunity for Men and Women of 2007); *Poland* – CEACR, observation, 2006 (Labour Code, amendments of 2001 and 2003); *Romania* – CEACR, observation, 2010 (Labour Code (Act No. 53/2003) as amended by Emergency Ordinance No. 55/2006); *Saudi Arabia* – CEACR, observation, 2011 (Ministerial Order No. 2370/1 of 18 September 2010); *Slovenia* – CEACR, observation, 2005 (Employment Relationships Act of 2002); *Togo* – CEACR, direct request, 2010 (Labour Code of 2006); *Republic of Moldova* – CEACR, direct request, 2007 (Act No. 5-XVI of 2006 regarding the assurance of equal opportunities for men and women); *Turkey* – CEACR, observation, 2006 (Labour Act, 2003 (No. 4857)); *United Kingdom (Gibraltar)* – CEACR, observation, 2009 (Equal Opportunities Act, 2006); and *Zimbabwe* – CEACR, observation, 2005 (Amendment Act No. 17 of 2002). See also *Timor-Leste*, Labour Code, 2002, which is referred to in its report under art. 19 of the Constitution.

<sup>1640</sup> *Plurinational State of Bolivia* – CEACR, observation, 2010 (Constitution of 2009); and *Ecuador* – CEACR, direct request, 2010 (Constitution of 2008).

<sup>1641</sup> For example, *Angola*, General Labour Act No. 2/00 of 1999; *Bangladesh*, Labour Act 2006; *Chad*, Labour Code of 1996; *Cote d'Ivoire*, Labour Code of 1995; *Djibouti*, Labour Code of 2006; *Fiji*, Employment Relations Law of 2007; *France*, Labour Code; *Grenada*, Employment Act No. 14 of 1999; *Latvia*, Labour Code of 2001; *Luxembourg*, Labour Code of 2006; *Malawi*, Employment Act; *Malta*, Employment and Industrial Relations Act of 2002; *Paraguay*, Labour Code of 1993; *Poland*, Labour Code of 1974; *Russian Federation*, Labour Code of 2001; *Serbia*, Labour Code of 2005; *Uganda*, Employment Act of 2006; and *Zimbabwe*, Labour Act of 1985.

dealing with equality and non-discrimination,<sup>1642</sup> and in others there is special legislation on equal remuneration.<sup>1643</sup> Once the area of wages becomes a matter for legislation, full legislative expression should be given to the principle of the Convention.<sup>1644</sup> Often in legislation the complementary aspects of equal remuneration for men and women for work of equal value and non-discrimination on the basis of sex are reflected and are mutually supportive.<sup>1645</sup> However, only prohibiting sex-based wage discrimination generally will not normally be sufficient to give effect to the Convention, as it does not capture the concept of “work of equal value”.<sup>1646</sup>

677. While considerable progress has been made in giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, several countries continue to have legislation that is narrower than required under the Convention. Some provisions limit equal remuneration to “equal”, “the same” “similar” or “substantially similar” work.<sup>1647</sup> Other formulations that are also too restrictive require equal conditions of work and equal professional ability;<sup>1648</sup> work of an equal level of complexity, responsibility and difficulty, performance under the same working conditions and upon achieving the same efficiency and work results;<sup>1649</sup> the same qualifications and the same conditions of work, or for work performed under equal conditions and with the same skills;<sup>1650</sup> or requiring equal skill, effort and responsibility, performed under similar working conditions.<sup>1651</sup> Even where the term “work of equal value” is provided for in the legislation, in some countries it is then further defined in the

<sup>1642</sup> *Albania* – CEACR, direct request, 2011 (Law on Gender Equality in Society of 2008); *Austria*, Equal Treatment Act 2004; *Estonia*, Gender Equality Act of 2004, as amended on 24 September 2009; *Italy*, Legislative Decree No. 198/2006, a consolidation act called “Code of Equal Opportunities between Men and Women”; *Republic of Moldova*, Act regarding the assurance of equal opportunities for men and women of 2006; *Norway*: Gender Equality Act, 1978; *Romania*, Act on equal opportunities between women and men of 2002; *Saint Lucia*, Equality of Opportunity and Treatment in Employment and Occupation Act of 2000; and *Sweden*: Discrimination Act of 2008.

<sup>1643</sup> For example, *Cyprus*, Act (Amendment) regarding equal remuneration between men and women for the same work or work of equal value of 2009; *Denmark*: Danish (Consolidation) Act No. 899 of 2008 on equal pay to men and women.

<sup>1644</sup> In its general observation, the Committee urged governments, where legal provisions are narrower than the principle of the Convention, to take the necessary steps to amend the legislation: CEACR, general observation, 2007, para. 6.

<sup>1645</sup> General Survey, 1986, para. 66.

<sup>1646</sup> See *Japan* – CEACR, observation, 2008; *Montenegro* – CEACR, direct request, 2011; and *San Marino* – CEACR, direct request, 2004.

<sup>1647</sup> For example, *Belize* – CEACR, direct request, 2010; *Canada* – CEACR, direct request, 2007, with respect to Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, Northwest Territories, Nunavut and Yukon; *Chile* – CEACR, observation, 2011; *China*, Labour Law 1994; *Colombia* – CEACR, observation, 2010; *El Salvador* – CEACR, direct request, 2009; *Ghana* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *India* – CEACR, observation 2010; *Jamaica* – CEACR, observation, 2011; *Kazakhstan* – CEACR, observation, 2011; *Mongolia* – CEACR, direct request, 2009; *Mozambique* – CEACR, observation, 2011; *Nepal* – CEACR, observation, 2009; *Nigeria* – CEACR, observation, 2003; *Panama* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2011; *United Arab Emirates* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2008.

<sup>1648</sup> See *Cambodia* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2010; and *Comoros* – CEACR, observation, 2011.

<sup>1649</sup> See *Central African Republic* – CEACR, observation, 2010; and *Kyrgyzstan* – CEACR, direct request, 2009.

<sup>1650</sup> See *Azerbaijan* – CEACR, observation, 2011; *Burundi* – CEACR, observation, 2011; *Cameroon* – CEACR, observation, 2010; *Congo* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, direct request, 2011; and *Mauritania* – CEACR, observation, 2009.

<sup>1651</sup> United States, Equal Pay Act, as referenced in the Government’s art. 19 report.

legislation or interpreted using similarly restrictive formulations, thus narrowing its scope.<sup>1652</sup> Historical experience has shown that insistence on factors such as “equal conditions of work, skill and output” can be used as a pretext for paying women lower wages than men.<sup>1653</sup> While factors such as skill, responsibility, effort and working conditions are clearly relevant in determining the value of the jobs, when examining two jobs, the value does not have to be the same with respect to each factor – determining value is about the overall value of the job when all the factors are taken into account.<sup>1654</sup>

678. How equal remuneration provisions are interpreted by courts has proven to be key in some countries. For example in *France*, the Court of Cassation, contrary to its previous case law, according to which different duties could not have an equal value, recognized the possibility of comparing the wages of persons performing different duties with a view to determining the existence of any wage discrimination.<sup>1655</sup> Similarly in *Iceland*, in 2005 for the first time a plaintiff succeeded before the Supreme Court in an equal pay case comparing jobs that were different in nature, namely that of a female manager of the social affairs department of a municipality with a male engineer also employed in the municipality.<sup>1656</sup> The European Court of Justice has also addressed a case of equal pay for work of equal value comparing the work of male pharmacists with the work of speech therapists, carried out almost exclusively by women.<sup>1657</sup> However, some courts have also had a role in defining the concept of “work of equal value” in a restrictive manner that does not give full expression to the principle of the Convention.<sup>1658</sup>

679. *Noting that many countries still retain legal provisions that are narrower than the principle laid down in the Convention, as they do not give expression to the concept of “work of equal value”, and that such provisions hinder progress in eradicating gender-based pay discrimination, the Committee again urges the governments of those countries to take the necessary steps to amend their legislation.*<sup>1659</sup> *Such legislation should not only provide for equal remuneration for equal, the same or similar work, but also address situations where men and women perform different work that is nevertheless of equal value.*<sup>1660</sup>

<sup>1652</sup> For example, *Bahamas* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, observation, 2011; *Dominica* – CEACR, direct request, 2010; *Dominican Republic* – CEACR, observation, 2011; *Mauritius* – CEACR, direct request, 2009; *Philippines* – CEACR, observation, 2011; *Slovakia* – CEACR, observation, 2010; *Yemen* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, direct request, 2011.

<sup>1653</sup> General Survey, 1986, para. 54; General Survey, 1975, para. 36.

<sup>1654</sup> See also paras 700–703 below.

<sup>1655</sup> *France* – CEACR, direct request, 2011 (judgment No. 1509 (09-40.021) of 6 July 2010).

<sup>1656</sup> Case No. 258/2004, decision of 20 January 2005.

<sup>1657</sup> See *Enderby v. Frenchay Health Authority*, Case No. C-127/92, 27 October 1993.

<sup>1658</sup> See, for example, *Republic of Korea* – CEACR, observation, 2009. In a decision of 14 March 2003 (2003DO2883), the Supreme Court considered that “work of equal value” referred to jobs that are equal or almost equal in nature.

<sup>1659</sup> See, for example, *Colombia* – CEACR, observation, 2010; *Dominican Republic* – CEACR, observation, 2011; *Egypt* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2011 (public service); *Jamaica* – CEACR, observation, 2010; *Kazakhstan* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2009; *Philippines* – CEACR, observation, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2011; and *Ukraine* – CEACR, observation, 2009.

<sup>1660</sup> CEACR, general observation, 2007, para. 3.

### *Collective agreements*

680. There have been some recent examples of collective agreements providing for equal remuneration for work of equal value, including in *Belgium, Grenada, Romania, Singapore* and *Uruguay*.<sup>1661</sup> In other cases, however, collective agreements are limited to equal remuneration for “equal work”, or requiring equal work under equal conditions or equal seniority, vocational qualifications, skills, professional ability or output.<sup>1662</sup> Some governments have indicated that there are no collective agreements addressing this issue,<sup>1663</sup> while in other countries, there may still be some collective agreements with separate wage rates for women and men.<sup>1664</sup> Governments should take the necessary steps, in cooperation with the social partners, to ensure that provisions of collective agreements observe the principle of equal remuneration for men and women for work of equal value.<sup>1665</sup>

681. While the Committee regularly requests information on the inclusion of the principle of the Convention in collective agreements, little information in this regard has been provided in government reports. Governments, in cooperation with employers’ and workers’ organizations, are therefore encouraged to provide this information more regularly in their reports under article 22 of the Constitution.

### *Minimum wages*

682. In recent years, the important role of minimum wages in the context of wage-determination machinery has been a particular focus of the Committee, as the setting of minimum wages is an important means by which the Convention is applied.<sup>1666</sup> Many countries have established or extended minimum wages.<sup>1667</sup> As the Committee noted in its General Survey in 1986, it remains the case that very few countries set out the principle of equality of remuneration between men and women expressly in legal texts respecting minimum wages,<sup>1668</sup> although there has been some recent progress in this regard, including in the *United Republic of Tanzania*, where pursuant to the Labour Institutions Act, wage boards are to take into account the constitutional right to equal remuneration and relevant ILO Conventions and Recommendations.<sup>1669</sup>

<sup>1661</sup> *Belgium* – CEACR, direct request, 2011; *Grenada* – CEACR, observation, 2008; *Romania* – CEACR, direct request, 2010; *Singapore* – CEACR, direct request, 2011; and *Uruguay* – CEACR, observation, 2010. For other examples see General Survey, 1986, paras 227–231.

<sup>1662</sup> See, for example, *Albania* – CEACR, direct request, 2009; *Argentina* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2008; *Côte d’Ivoire* – CEACR, direct request, 2010; *France* – CEACR, direct request, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2011; *Mauritius* – CEACR, direct request, 2009; and *Romania* – CEACR, direct request, 2010.

<sup>1663</sup> See, for example, *Bahamas* – CEACR, direct request, 2011; *Estonia* – CEACR, direct request, 2011; *Guyana* – CEACR, direct request, 2011; *Israel* – CEACR, direct request, 2011; and *Lesotho* – CEACR, direct request, 2008.

<sup>1664</sup> See, for example, *Trinidad and Tobago* – CEACR, observations, 2008 and 2010.

<sup>1665</sup> See also para. 694 below.

<sup>1666</sup> CEACR, General Report, 2001, para. 47.

<sup>1667</sup> *ibid.*

<sup>1668</sup> General Survey, 1986, para. 217.

<sup>1669</sup> *United Republic of Tanzania* – CEACR, direct request, 2006. See also *Australia* – CEACR, observation, 2011 (Fair Work Act, 2009).

683. As women predominate in low-wage employment,<sup>1670</sup> and a uniform national minimum wage system helps to raise the earnings of the lowest paid, it has an influence on the relationship between men and women's wages and on reducing the gender pay gap.<sup>1671</sup> Minimum wages are, however, often set at the sectoral level, and there is a tendency to set lower wages for sectors predominantly employing women.<sup>1672</sup> Due to such occupational segregation, special attention is needed in the design or adjustment of sectoral minimum wage schemes to ensure that the rates fixed are free from gender bias, and in particular that certain skills considered to be "female" are not undervalued. Governments often state that regulations determining the minimum wage do not make a distinction between men and women.<sup>1673</sup> However, this is not sufficient to ensure that there is no gender bias in the process. ***Rates should be fixed based on objective criteria, free from gender bias, to ensure that the work in sectors with a high proportion of women is not being undervalued in comparison with sectors in which men are predominantly employed.***<sup>1674</sup> ***In addition, in defining different occupations and jobs for the purpose of fixing minimum wages, gender-neutral terminology should be used to avoid stereotypes as to whether certain jobs should be carried out by a man or a woman.***<sup>1675</sup>

684. There are now only rare examples of different minimum wages being specified for male and female workers, though some still exist, and it is important that this form of direct wage discrimination be addressed as a matter of urgency.<sup>1676</sup> It is also important to ensure that separate female and male categories are not replaced by apparently neutral terms, for example by changing "labourer (male)" and "labourer (female)" to "labourer

<sup>1670</sup> *Global wage report 2010/11: Wage policies in times of crisis* (Geneva, ILO, 2010), p. 43. See also *Philippines* – CEACR, direct request, 2011.

<sup>1671</sup> See S. Hayter and B. Weinberg (ed.), op. cit. and General Survey, 1975, para. 92. According to the Government of *Hungary*, since the adoption of the compulsory national minimum wage pursuant to Government Decree No. 321/2008 (XII.29), the average pay gap among skilled workers has narrowed: *Hungary* – CEACR, direct request, 2011.

<sup>1672</sup> See, for example, *Bangladesh* – CEACR, observation, 2011 (ready-made garment industry); and *Barbados* – CEACR, direct request, 2010 (domestic workers).

<sup>1673</sup> See, for example, *Ecuador* – CEACR, direct request, 2002; *Pakistan* – CEACR, direct request, 2008; *Panama* – CEACR, direct request, 2011; *Syrian Arab Republic* – CEACR, direct request, 2001; and *Tunisia* – CEACR, direct request, 2011.

<sup>1674</sup> The Committee has raised this issue in the context of a wide range of countries: see for example *Cambodia* – CEACR, direct request, 2011; *Costa Rica* – CEACR, direct request, 2010; *Côte d'Ivoire* – CEACR, direct request, 2010; *Honduras* – CEACR, direct request, 2010; *Indonesia* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Philippines* – CEACR, direct request, 2011; *Rwanda* – CEACR, direct request, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; and *South Africa* – CEACR, direct request, 2008. With respect to the role of job evaluation in setting minimum wages, see para. 706 below.

<sup>1675</sup> See *Guyana* – CEACR, direct request, 2011: terms such as "barman, kitchen maid, washman, serviceman" should be avoided; *Sri Lanka* – CEACR, direct request, 2008 (referring to terms such as "foreman" and "watchman"); and *Saint Vincent and the Grenadines* – CEACR, direct request, 2009: "watchman", "houseman", "bellboy", "hostess". See also *Niger* – CEACR, direct request, 2008; and *Mauritius* – CEACR, direct request 2006.

<sup>1676</sup> See, for example, *Grenada* – CEACR, observation, 2010: Minimum Wage Order SRO 11 (2002) providing for separate wage rates for female and male agricultural workers; and *Mauritius* – CEACR, direct requests, 2006, 2008 and 2009: a number of Remuneration Orders continue to contain pay differentials or wage categories based on sex, including in the tea industry, salt manufacturing, sugar industry and catering industry. The Committee was able to note progress in *Sri Lanka* in revising the Wage Board Ordinances regarding the tobacco and cinnamon trades so that they no longer apply differential wage or time/piece rates for men and women: *Sri Lanka* – CEACR, observation, 2009. Progress was also noted in *Saint Lucia*, when the minimum wage orders for agricultural workers with separate wage rates for women and men were revoked: *Saint Lucia* – CEACR, direct request, 2004.

(grade I)” and “labourer (grade II)”, if in reality the gender distinction is maintained.<sup>1677</sup> Other issues of concern arising with respect to minimum wages in the context of the Convention are that female-dominated groups may be excluded from its application, and particularly those that are the most vulnerable to wage discrimination, such as domestic and agricultural workers, and workers in export processing zones,<sup>1678</sup> which could constitute indirect discrimination against women. Lack of enforcement of the minimum wage provisions is another concern.<sup>1679</sup> There are, however, some examples of progress being made towards more inclusive minimum wages, in particular to cover domestic workers, including in *Chile*, *Portugal* and *Trinidad and Tobago* in the context of a single national minimum wage, and in *South Africa*, *Switzerland* and *Uruguay*, setting rates specifically for domestic workers.<sup>1680</sup> The Committee notes that the Domestic Workers Convention, 2011 (No. 189), specifically requires ratifying States to take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.<sup>1681</sup>

685. The lack of understanding by those setting minimum wages of the principle of equal remuneration for men and women for work of equal value has also been raised.<sup>1682</sup> It is important for governments, in cooperation with employers’ and workers’ organizations, to examine the functioning of the mechanisms for the setting of minimum wages in the light of the need to promote and ensure the principle of equal remuneration for men and women for work of equal value.<sup>1683</sup>

## Remuneration: The diversity of elements

686. The Convention sets out a very broad definition of “remuneration” in *Article 1(a)*, which includes not only “the ordinary, basic or minimum wage or salary” but also “any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment”. The broad definition of remuneration in the Convention captures all elements that a worker may receive for his or her work, including payments in cash as well as in kind; and payments made directly as well as indirectly by the employer to the worker which arise out of the worker’s employment.

687. Such a broad definition is necessary since if only the basic wage were being compared, much of what can be given a monetary value arising out of the job would not be captured, and such additional components are often considerable, making up

<sup>1677</sup> See *Sri Lanka* – CEACR, direct request, 2009.

<sup>1678</sup> See, for example, *Honduras* – CEACR, direct request, 2010; *Jordan* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2006; *Seychelles* – CEACR, direct request, 2011; and *United Kingdom (Gibraltar)* – CEACR, observation, 2011. In *Barbados* – CEACR, direct request, 2010, it was noted that the minimum wages for domestic workers had not been increased in over 20 years. See also *Decent work for domestic workers*, Report IV(1), ILC, 99th Session, Geneva, 2010, para. 140 (table IV.1). In *Cyprus* – CEACR, direct request, 2011, however, the Committee was able to note that the extension of minimum wages to employees with sanitation and caring duties had contributed to reducing the gender pay gap.

<sup>1679</sup> See General Survey, 1986, para. 224. See *Jamaica* – CEACR, direct request, 2006; and *Pakistan* – CEACR, observation, 2010, in both countries noting that the number of women who submitted complaints relating to the Minimum Wage Act was significantly higher than men.

<sup>1680</sup> See *Remuneration in domestic work*, Domestic Work Policy Brief No. 1 (Geneva, ILO, 2011).

<sup>1681</sup> Convention No. 189, *Art. 11*. Regarding domestic workers, see also paras 663–664 and 707.

<sup>1682</sup> See, for example, *Egypt* – CEACR, direct request, 2011; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2011.

<sup>1683</sup> See, for example, *Pakistan* – CEACR, observation, 2011.

increasingly more of the overall earnings package. The words “directly or indirectly” were added to the definition of remuneration in the Convention with a view to ensuring that certain emoluments which were not payable directly by the employer to the worker concerned would be covered.<sup>1684</sup> The definition also captures payments or benefits, whether received regularly or only occasionally.<sup>1685</sup>

### Legislation

688. Increasingly States are including a broad definition of remuneration in legislation, in line with the definition in *Article 1(a)*.<sup>1686</sup> In some countries, even though the term “equal remuneration” is not actually used in legislation, but rather equal “pay”, “wages” or “salary”, it is then defined in broad terms in the legislation to include the elements in *Article 1(a)*.<sup>1687</sup> In other countries, reference may be made to equal “pay”, “wages” or even “remuneration”, without defining such term, or defining it in a manner that restricts the scope of comparison.<sup>1688</sup> The term that is used in the national context is less important than the elements it actually encompasses, and when comparing the value of jobs in terms of monetary value, a comprehensive definition is needed.

689. A difficulty in determining if the Convention has been applied with respect to the definition of “remuneration” arises in a number of countries due to imprecision in definitions in the legislation addressing equal remuneration. For example, the provision relating to the principle of the Convention may refer to “equal pay”, but then only the term “wages” or “salary” is defined, and it is not clear if the terms are intended to be interchangeable.<sup>1689</sup> The term “remuneration” needs to be defined with rigour if the Convention is to be applied fully.

<sup>1684</sup> See *Slovakia* – CEACR, direct request, 2008: the Committee noted that payments not directly dependent on the work performed, such as travel expenses and revenue from capital shares and bonds, were also covered under *Art. 1(a)* of the Convention, as it covers both direct and indirect emoluments.

<sup>1685</sup> General Survey, 1986, para. 90.

<sup>1686</sup> See *Angola* – CEACR, observation, 2001 (General Labour Act of 2000); *Belarus* – CEACR, observation, 2002 (Labour Code of 1999); *Benin*, Labour Code of 1998; *Kenya* – CEACR, observation, 2009 (Employment Act 2007); *Malawi* – CEACR, observation, 2002 (Employment Act of 2000); *Namibia*, Labour Act of 2007; *Niger* – CEACR, observation, 1997 (Labour Code of 1996); and *Togo* – CEACR, direct request, 2010 (Labour Code of 2006). In addition, as a result of the European Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), and the need for European States to harmonize their legislation with it, a number of European countries have incorporated a definition similar to that set out in the Convention, including for example *Cyprus* – CEACR, observation, 2011 (Act No. 38(1) of 2009 (Amendment) regarding equal remuneration between men and women for the same work or work of equal value); *Denmark*: (Consolidation) Act No. 899 of 2008 on equal pay to men and women; *Latvia* – CEACR, observation, 2004 (Labour Code of 2001); *Lithuania* – CEACR, observation, 2005 (Labour Code of 2002); *Malta*: Equal Treatment in Employment Regulations, 2004 (as amended by Legal Notice 137 of 2007), regulation 2; *Poland* – CEACR, observation, 2006 (Labour Code, as amended in 2001 and 2006); *Slovakia* – CEACR, observation, 2010 (Labour Code of 2006, as amended by Act No. 348/2007 Coll.); and *Spain* – CEACR, observation, 2006 (Act No. 33 of 2002 modifying section 28 of the consolidated text of the Act on the status of workers).

<sup>1687</sup> See, for example, *Antigua and Barbuda* – CEACR, direct request, 2010 (Labour Code); *Azerbaijan* – CEACR, direct request, 2002 (Labour Code); *Congo* – CEACR, direct request, 2008 (Labour Code); *Croatia*, Labour Code of 2009 and Gender Equality Act of 2008; *Djibouti* – CEACR, observation, 2009 (Labour Code of 2006); *Ghana*, direct request 2008; *Togo* – CEACR, direct request, 2010 (Labour Code of 2006); and *United Kingdom (Gibraltar)* – CEACR, observation, 2009 (Equal Opportunities Act of 2009).

<sup>1688</sup> See, for example, *Australia* – CEACR, direct request, 2011; *Eritrea*, direct request 2011; *Kyrgyzstan* – CEACR, direct request, 2011; *Papua New Guinea* – CEACR, direct request, 2008; *Saint Lucia* – CEACR, observation, 2009; and *Uruguay* – CEACR, direct request, 2010.

<sup>1689</sup> See *Antigua and Barbuda* – CEACR, direct request, 2010; *Armenia* – CEACR, direct request, 2010; *Bahamas* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.



*Additional emoluments*

690. The term “any additional emoluments whatsoever” brings within the ambit of the Convention elements as numerous as they are diverse.<sup>1690</sup> When the Convention was adopted, this broad formulation was preferred rather than making specific reference to, for example, “various bonuses or other allowances”.<sup>1691</sup> The use of “any additional emoluments whatsoever” has allowed the Convention to maintain its relevance as different components are added to the overall pay and benefit package that might not have been foreseen at the time the Convention was adopted.

691. “Remuneration” under the Convention includes wage differentials or increments based on seniority, or marital status, cost-of-living allowances, dependency allowances, travel allowances or expenses, housing and residential allowances.<sup>1692</sup> It also includes benefits in kind such as providing uniforms, laundering work clothes and providing accommodation or food.<sup>1693</sup> In some countries, specific benefits and allowances are enumerated in the legislation as being included in remuneration, going beyond basic and ordinary wages, including additional payments and benefits such as uniforms, housing, travel allowances, vacation allowances, productivity bonuses, share of profits, seniority allowances and dependency allowances.<sup>1694</sup> In other cases, even when a broad definition is given of “remuneration”, exceptions are provided that limit the emoluments to be included, thus limiting the scope of the application of the principle.<sup>1695</sup>

692. Remuneration also includes all allowances paid under social security schemes financed by the undertaking or industry concerned.<sup>1696</sup> Benefits, and in particular pensions, should not give rise to discrimination on the pretext that they are not employment-related benefits paid directly by the employer and therefore analogous to wages.<sup>1697</sup> The definition of “remuneration” in *Article 1(a)* applies whether emoluments are payable directly or indirectly and arising out of the workers’ employment.<sup>1698</sup> The Committee has noted situations where women are excluded or have limited participation in supplementary pension schemes due to the exclusion of certain job categories. In the *Netherlands*, the Government, together with the social partners, undertook a study to determine the number of employees without occupational pensions in order to identify the job categories excluded and the number of women and men affected, and provided

<sup>1690</sup> General Survey, 1986, para. 15.

<sup>1691</sup> *Equal remuneration for men and women workers for work of equal value*, Report VII(1), ILC, 34th Session, Geneva, 1951, pp. 15–16.

<sup>1692</sup> General Survey, 1986, para. 15. See also *Cambodia* – CEACR, direct request, 2011.

<sup>1693</sup> General Survey, 1986, para. 15; see also *Kenya* – CEACR, observation, 2009; and *Sri Lanka* – CEACR, observation, 2009.

<sup>1694</sup> CEACR, General Report, para. 47. See also *Congo* – CEACR, direct request, 2008 (Labour Code); *Mauritania* – CEACR, direct request, 2008 (Labour Code); and *Mauritius* – CEACR, direct request, 2009 (Employment Rights Act 2008).

<sup>1695</sup> See, for example, *Bangladesh*, observation 2009; *Burundi* – CEACR, direct request, 2008; *Cambodia* – CEACR, direct request, 2011; *Slovakia* – CEACR, direct request, 2008; and *Syrian Arab Republic* – CEACR, direct request, 2011.

<sup>1696</sup> See General Survey, 1986, para. 17; see also *Social security and the rule of law*, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 100th Session, Geneva, 2011, paras 214–217.

<sup>1697</sup> General Survey, 1975, para. 62.

<sup>1698</sup> See General Survey, 1986, paras 16–17.

fiscal incentives to encourage the conclusion of agreements on occupational pensions.<sup>1699</sup>

#### Discriminatory legislation regarding allowances and benefits

693. Legislation incorporating provisions discriminating directly or indirectly based on sex with respect to remuneration undermines the principle of the Convention. The differential treatment is often linked to the express or implied assumption that the man is the “breadwinner” or the “head of the household” for the purpose of receiving certain allowances or benefits.<sup>1700</sup> In this context, the Committee notes the possibility of allowing both spouses to choose who would benefit from such allowances, rather than starting from the principle that they should systematically be paid to the man, and only in exceptional situations to the woman.<sup>1701</sup> The Committee has also identified situations of direct discrimination where the law provides for different ages for women and men with respect to severance pay,<sup>1702</sup> or encourages women to resign by providing for them to receive compensation when they resign due to marriage or pregnancy.<sup>1703</sup> Such provisions reinforce stereotypes regarding women’s aspirations, preferences and capabilities, and their role and responsibilities in society, thus exacerbating labour market inequalities. In some cases such legislation is broadly applicable, and in other cases it is limited to the public service: in either situation, the State is responsible for the enactment of legislation and, therefore, should not put in place a regime that undermines the principle of the Convention. The Committee therefore calls for such provisions to be repealed or amended.

#### Collective agreements

694. There are also discriminatory provisions in some collective agreements, for example limiting allowances and benefits received by women, such as the granting of transport facilities only to the wife and children of an employee, and thus not to the husband of a female employee. There are also provisions that may result in indirect wage discrimination against women, for example collective agreements that exclude part-time workers from certain bonuses.<sup>1704</sup> In such situations, governments should take the necessary steps, in cooperation with the social partners, to ensure that provisions of collective agreements observe the principle of equal remuneration for men and women for work of equal value.<sup>1705</sup> Even if such a benefit is granted in practice to both male and female employees, maintaining discriminatory provisions in a collective agreement may have the effect of preventing men and women workers from knowing their rights and seeking to assert them.<sup>1706</sup>

<sup>1699</sup> *Netherlands* – CEACR, direct request, 2008; See also *Ireland* – CEACR, direct requests, 2004 and 2007. The Pension Act was amended to include pension rights in the definition of remuneration under section 2(1) of the Employment Equality Act, 1998.

<sup>1700</sup> See *Burundi* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; *Indonesia* – CEACR, observation, 2011; and *Turkey* – CEACR, direct request, 2011.

<sup>1701</sup> See, for example, the Committee’s recommendations with respect to Jordan’s Civil Service Regulations No. 30 of 2007: *Jordan* – CEACR, direct request, 2011.

<sup>1702</sup> See, for example, *Saint Lucia* – CEACR, observation, 2011.

<sup>1703</sup> See *Lebanon* – CEACR, direct request, 2010; and *Syrian Arab Republic* – CEACR, direct request, 2011. See also *Belize* – CEACR, direct request, 2009.

<sup>1704</sup> See *Netherlands* – CEACR, observation, 2009.

<sup>1705</sup> See *Cameroon* – CEACR, observation, 2010. See also *Ghana* – CEACR, direct request, 2004; *Madagascar* – CEACR, observation, 2010; and *Togo* – CEACR, direct request, 2003.

<sup>1706</sup> *Cameroon* – CEACR, observation, 2010; and *Ghana* – CEACR, direct request, 2004.

## Comparing jobs, determining value

695. *The concept of “equal value” requires some method of measuring and comparing the relative value of different jobs.*<sup>1707</sup> *There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions.*<sup>1708</sup> Article 3 also makes it clear that differential rates between workers are compatible with the principle of the Convention if they correspond, without regard to sex, to differences determined by such evaluation.<sup>1709</sup> In the light of persistent gender pay gaps, greater focus is being placed on developing or implementing objective job evaluation methods, and some recent progress has been noted in this regard, including in *Algeria, Barbados, Belgium, Czech Republic, Ghana, Lithuania, Netherlands, New Zealand, Panama, Papua New Guinea, Portugal, Saint Lucia, Switzerland, Togo, Trinidad and Tobago, South Africa and Zimbabwe.*<sup>1710</sup> Measures for the objective evaluation of jobs can be taken at the enterprise, sectoral or national level, in the context of collective bargaining, as well as through wage-fixing mechanisms.<sup>1711</sup> The implementation of job evaluation exercises has been shown to have a measurable impact on gender pay differentials.<sup>1712</sup>

696. The reports of some governments have indicated confusion between performance appraisal, which aims at evaluating the performance of an individual worker in carrying out his or her job, and objective job evaluation, which is to measure the relative value of jobs with varying content on the basis of the work to be performed.<sup>1713</sup> Objective job evaluation is concerned with evaluating the job and not the individual worker.<sup>1714</sup>

## Scope of comparison

697. Application of the Convention’s principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers.<sup>1715</sup> Ensuring a broad scope of

<sup>1707</sup> General Survey, 1986, para. 138.

<sup>1708</sup> CEACR, general observation, 2007, para. 4.

<sup>1709</sup> Art. 3(3).

<sup>1710</sup> *Algeria* – CEACR, observation, 2011; *Barbados* – CEACR, observation, 1999; *Belgium* – CEACR, direct request, 2011; *Czech Republic* – CEACR, direct request, 2005; *Ghana* – CEACR, direct request, 2010; *Lithuania* – CEACR, direct request, 2010; *Netherlands* – CEACR, direct request, 2009; *New Zealand* – CEACR, observation, 2008; *Panama* – CEACR, observation, 2004; *Papua New Guinea* – CEACR, direct request, 2007; *Portugal* – CEACR, direct requests, 2006 and 2009; *Romania* – CEACR, direct request, 2006; *Saint Lucia* – CEACR, direct request, 2011; *South Africa* – CEACR, direct request, 2008; *Switzerland* – CEACR, observation, 1999; *Togo* – CEACR, direct request, 2010; *Trinidad and Tobago* – CEACR, direct request, 2007; and *Zimbabwe* – CEACR, direct request, 2005.

<sup>1711</sup> CEACR, general observation, 2007, para. 7.

<sup>1712</sup> See, for example, *Barbados* – CEACR, observation, 1999; and *Iceland* – CEACR, direct request, 2009.

<sup>1713</sup> See, for example, *Grenada* – CEACR, direct request, 2008; *Honduras* – CEACR, direct request, 2006; *Malawi* – CEACR, direct request, 2008; *Mongolia* – CEACR, direct request, 2009; *Morocco* – CEACR, direct request, 2009; *Seychelles* – CEACR, direct request, 2008; *Sri Lanka* – CEACR, observation, 2009; and *United Republic of Tanzania* – CEACR, direct request, 2010.

<sup>1714</sup> General Survey, 1986, para. 139.

<sup>1715</sup> CEACR, general observation, 2007, para. 3, and General Survey, 1986, para. 22. In the first Conference discussion of what would become Convention No. 100, an amendment was rejected which would have added to

comparison is essential for the application of the principle of equal remuneration given the continued prevalence of occupational sex segregation. As previously noted, historical attitudes towards the role of women in society, along with stereotypical assumptions regarding women's aspirations, preferences and capabilities and "suitability" for certain jobs, have contributed to occupational sex segregation within the labour market, with women concentrated in certain jobs and certain sectors of activity.<sup>1716</sup> These views and attitudes also tend to result in the undervaluation of "female jobs" in comparison with those of men who are performing different work and using different skills, when determining wage rates.<sup>1717</sup>

698. The reach of comparison between jobs performed by women and men should be as wide as possible, in the context of the level at which wage policies, systems and structures are coordinated.<sup>1718</sup> As effective application of the principle of the Convention is needed, where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities for comparison at the enterprise or establishment level will be insufficient.<sup>1719</sup> In certain countries the scope of comparison is limited to the same employer in legislation.<sup>1720</sup> The European Committee of Social Rights has also considered under the European Social Charter that "[a]s comparisons need to be made in order to determine whether women and men really do receive equal pay, the Committee has consistently found that 'the possibility to look outside an enterprise for an appropriate comparison should exist where necessary' (Conclusions XIII-1, p. 121)".<sup>1721</sup> Similarly, the Committee of Experts has also asked certain governments to extend the scope of comparison beyond the enterprise.<sup>1722</sup>

699. Where comparison is limited to the enterprise, and no comparable worker is employed in the enterprise, the possibility of relying on a hypothetical comparator has been used, including in *Austria*, allowing evidence of what a man might be paid.<sup>1723</sup> In *Canada* (Quebec), a regulation was adopted setting parameters for undertaking a pay equity exercise in the absence of a male-dominated class, linked to duties,

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the definition of "equal remuneration for men and women for work of equal value" that it was limited to work performed by the same employer, in the same locality. This amendment had been supplemented by a further amendment which would have linked remuneration to the quality and quantity and other characteristics of the work performed and of the cost of production and services, which was also rejected: *Equal Remuneration for Men and Women for Work of Equal Value*, ILC, Report VII(1), Geneva, 1950, pp. 18–19.

<sup>1716</sup> CEACR, general observation, 2007, para. 2; General Survey, 1975, para. 38; General Survey, 1986, para. 256.

<sup>1717</sup> CEACR, general observation, 2007, para. 2.

<sup>1718</sup> See General Survey, 1986, para. 72.

<sup>1719</sup> *ibid.*; see *Norway* – CEACR, direct request, 2011.

<sup>1720</sup> In Europe, for example, in *Azerbaijan, Czech Republic, Iceland, Israel, Norway, Portugal* and *Slovakia*, and also in Latin America, for example, in *El Salvador, Guatemala, Honduras* and *Panama*. In legislation in certain African countries, the principle of equal remuneration for equal work or for work of equal value is generally not limited to work with the same employer except, for example, in the General Labour Act, 2000, of *Angola* which defines work of equal value as "work carried out for the same employer, when the tasks performed, albeit of a different nature, are determined to be equivalent through the application of objective job evaluation criteria": *Angola* – CEACR, observation, 2003. The same kind of limitation is found in some Caribbean countries, such as *Antigua and Barbuda, Bahamas, Dominica, Jamaica* and *Saint Vincent and the Grenadines*.

<sup>1721</sup> European Committee of Social Rights, with respect to *Iceland* (Gender Equality Act), Conclusions XVIII-2, p. 12.

<sup>1722</sup> See, for example, *Angola* – CEACR, observation, 2001; *Bahamas* – CEACR, direct request, 2007; *Czech Republic* – CEACR, direct request, 2010; *El Salvador* – CEACR, direct request, 2007; *Iceland* – CEACR, direct request, 2011; *Netherlands* – CEACR, direct request, 2009; and *Norway* – CEACR, direct request, 2011.

<sup>1723</sup> *Austria* – CEACR, direct requests, 2008 and 2010.

responsibilities, qualifications, effort and conditions.<sup>1724</sup> Legislation should not exclude the possibility of bringing equal pay claims where no comparator is available within the enterprise, particularly in cases where enterprises predominantly employ women.<sup>1725</sup>

### *Objective job evaluation methods*

700. Job evaluation is a formal procedure which, through analysing the content of jobs, gives a numerical value to each job.<sup>1726</sup> Two jobs that are found to have the same overall numerical value are entitled to equal remuneration. There are different methods of job evaluation.<sup>1727</sup> For the purpose of ensuring gender equality in the determination of remuneration, analytical methods of job evaluation have been found to be the most effective. Such methods analyse and classify jobs on the basis of objective factors relating to the jobs to be compared, such as skills/qualifications, effort, responsibilities and working conditions.<sup>1728</sup> These factors can then be divided into sub-factors, which can ensure that within each factor those aspects typically identified with women are not overlooked. With respect to effort, for example, sub-factors should include not only physical, but also mental and emotional effort, and responsibility can be extended beyond financial responsibility and responsibility for material resources to responsibility for people and for human resources.<sup>1729</sup>

701. ***Whatever methods are used for the objective evaluation of jobs, particular care must be taken to ensure that they are free from gender bias: it is important to ensure that the selection of factors for comparison, the weighting of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly.*** Often skills considered to be “female”, such as manual dexterity and those required in the caring professions, are undervalued or even overlooked, in comparison with traditionally “male” skills, such as heavy lifting.<sup>1730</sup> In addition, if job evaluation is to make a positive contribution to resolving wage discrimination and promoting equality, there must be a legal and administrative framework enabling workers to claim equal remuneration on the basis of the assessed value of their jobs, together with a right to claim redress when job evaluation systems have been found to be discriminatory.<sup>1731</sup>

<sup>1724</sup> Canada – CEACR, direct request, 2007 (Regulation respecting pay equity in enterprises where there are no predominantly male job classes, 1 August 2010). The Government of Canada noted that, since discrimination is embedded in the social and economic fabric, the absence of a male-dominated class in an enterprise does not indicate an absence of pay discrimination based on sex.

<sup>1725</sup> See Austria – CEACR, direct request, 2010; and United Kingdom – CEACR, direct request, 2011. See also United Kingdom – CEACR, observation, 2007: the Women and Work Commission recommended allowing a hypothetical comparator in equal pay claims, and the introduction of generic or representative equal pay claims.

<sup>1726</sup> See General Survey, 1986, para. 139.

<sup>1727</sup> See examples in the General Survey, 1986, pp. 106–108: non-analytical methods (ranking and grade description); analytical methods (point rating, factor comparison).

<sup>1728</sup> CEACR, general observation, 2007, para. 3.

<sup>1729</sup> See *Promoting pay equity: Gender neutral job evaluation for equal pay* (Geneva, ILO, 2008), Chapter 4.

<sup>1730</sup> CEACR, general observation, 2007, para. 5. With respect to criteria for the evaluation and classification of functions contained in certain collective agreements, a study in Luxembourg found that it continued to favour male workers, as traditional male criteria, such as effort and muscular fatigue, were still overvalued in relation to criteria for jobs traditionally occupied by women: Luxembourg – CEACR, direct request, 2010.

<sup>1731</sup> General Survey, 1986, para. 152.

702. A number of analytical job evaluation methods have been developed, for example: in *Sweden*, “Steps to Pay Equity”; in *Switzerland*, the ABAKABA and EVALFRI methods; and in *Spain* the ISOS methods.<sup>1732</sup> With respect to the ABAKABA method, the Committee has noted that it takes into consideration characteristics considered to be masculine and feminine, and includes criteria such as repetitiveness and precision of movement, responsibility for the life of others, responsibility for the environment, the number of work interruptions (for example in secretarial and clerical work), empathy and the ability to organize, which are often linked to occupations in which women are predominantly employed.<sup>1733</sup> In the *Czech Republic*, an analytical methodology of job evaluation was developed for manual workers, employees and commercial employees in the private sector. It includes criteria for job evaluation based on factors related to work predominantly associated with women as well as men, including specific job requirements in terms of theoretical education and knowledge, practical experience, dexterity, complexity of the job or the working activity and of working relations, handling information, responsibility for damage and for occupational health and safety, requirements with respect to management and work organization, physical, sensorial and neuro-psychological demands, and the work hazards involved.

703. The rise in the use of job evaluation methods is particularly marked in the public sector, including in *Ghana*, where a job evaluation exercise was undertaken to determine the value of all public sector jobs, with the specific objective of enabling “the Government to reward its employees in accordance with the principle of ‘equal pay for equal worth’”. The evaluation was made using the point factor method, on the basis of four main job factors (knowledge and skill, responsibility, working conditions and effort), which were subdivided into 13 sub-factors.<sup>1734</sup> In a number of countries, job evaluation has been applied more specifically in the public service.<sup>1735</sup>

### Legislation

704. In a number of countries, legislation refers specifically to job evaluation. For example in *Angola*, the legislation setting out the principle of equal remuneration for work of equal value defines “equal value” to include tasks of a different nature determined to be equivalent through the application of objective job evaluation criteria.<sup>1736</sup> In the Labour Code of *Togo*, it is stated that job evaluation methods should

<sup>1732</sup> *Equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report 1(B), ILC, 96th Session, Geneva, 2007, p. 74. See also *Sweden* – CEACR, direct request, 2001; *Switzerland* – CEACR, observation, 1999; and *Spain* – CEACR, direct request, 2005. The Swedish “Steps to Pay Equity” process is available on the website of the Swedish Discrimination Ombudsman ([www.do.se](http://www.do.se)) and includes education, occupational experience, training, further education, problem solving and social skills; under responsibility, sub-factors such as responsibility for material resources and information, people, planning, development, results and management; under working conditions, physical conditions as well as mental conditions, including concentration, monotony, availability, trying relationships and stress are evaluated.

<sup>1733</sup> See *Switzerland* – CEACR, observation, 1999, regarding the “Do I earn what I deserve” (VWIV) instrument. The Committee has also noted the Peromnes method used in *South Africa* (CEACR – direct request, 2008), which is a points assessment technique using eight factors, each of which is weighted to determine the position of the job in the grade ranking: problem solving; consequences of judgements; pressure of work; knowledge; job impact; comprehension; educational qualification; and training/experience.

<sup>1734</sup> See *Ghana* – CEACR, direct request, 2010. See also *Czech Republic* – CEACR, direct request, 2005; and *Panama* – CEACR, observation, 2004.

<sup>1735</sup> See, for example, *Papua New Guinea* – CEACR, direct request, 2007; *Trinidad and Tobago* – CEACR, direct request, 2007; and *Zimbabwe* – CEACR, direct request, 2005.

<sup>1736</sup> *Angola* – CEACR, observation, 2001 (General Labour Act of 2000).

be based on objective considerations, based essentially on the tasks to be performed.<sup>1737</sup> In *Indonesia*, a ministerial decision concerning the regulation of the structure and scale of wages provides that enterprises shall establish wage structures and wage scales on the basis of a job analysis, job description and job evaluation.<sup>1738</sup> In *Panama*, an executive decree provides for the development of mechanisms and procedures for the appraisal of tasks to ensure the application of the principle of equal remuneration for men and women for work of equal value.<sup>1739</sup>

### *Collective agreements*

705. Objective job evaluation methods have also been provided for in collective agreements in both the public and private sectors. In *Iceland*, for example, collective agreements have been negotiated between 15 unions and the City of Reykjavik which include provisions for job evaluation.<sup>1740</sup> In *Algeria*, a national level collective agreement contains provisions relating to the classification of jobs which must be established by enterprise agreements on the basis of job descriptions and analysis, evaluation and rating of their content and their classification in accordance with the results of the evaluation. It also sets out specific criteria for job evaluation.<sup>1741</sup> In *Belgium*, a collective agreement on equal remuneration between male and female workers was made compulsory through legislation, explicitly providing that all sectors and enterprises must review and adapt their job classification systems (choice of criteria, weighting of criteria, system of converting their evaluation values into remuneration components) where they are not gender neutral.<sup>1742</sup> The determination of criteria for job evaluation and their weighting are matters on which cooperation between employers and workers is particularly important, giving collective bargaining an important place in this context.<sup>1743</sup>

### *Minimum wages*

706. The fixing of minimum wages can make an important contribution to the application of the principle of equal remuneration. It is therefore important to ensure that a job evaluation method used to design or adjust sectoral or occupational minimum wage schemes is free from gender bias and, consequently, that the choice of factors for comparison, the weighting of these factors and the actual comparison carried out are not inherently discriminatory. In particular, it needs to be ensured that certain skills considered to be “female” are not undervalued or even overlooked, in comparison with traditionally “male” skills.<sup>1744</sup>

<sup>1737</sup> *Togo* – CEACR, direct request, 2010 (Labour Code of 2006).

<sup>1738</sup> *Indonesia* – CEACR, direct request, 2007. See also *Czech Republic* – CEACR, direct request, 2008; *Papua New Guinea* – CEACR, direct request, 2007; *Romania* – CEACR, direct request, 2006; and *Slovakia* – CEACR, direct request, 2010.

<sup>1739</sup> *Panama* – CEACR, observation, 2004.

<sup>1740</sup> *Iceland* – CEACR, direct request, 2009. See also *Spain* – CEACR, direct request, 2011: an extension to an inter-confederation agreement for collective bargaining establishes as a criterion the need to remove differences in pay levels and highlights the usefulness of systems of job evaluation.

<sup>1741</sup> *Algeria* – CEACR, observation, 2011.

<sup>1742</sup> *Belgium* – CEACR, direct request, 2011 (Collective agreement No. 25ter of 2008).

<sup>1743</sup> See General Survey, 1986, para. 152. See also Recommendation No. 90, *Para. 5*; and *Portugal* – CEACR, direct request, 2006.

<sup>1744</sup> See, for example, *Costa Rica* – CEACR, direct request, 2010; *Haiti* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2010; and *Turkmenistan* – CEACR, direct request, 2011. See also paras 682–685 above.

### *Domestic workers*

707. Particular concerns regarding valuing work have been raised in recent years in the context of domestic workers. Domestic work involves tasks that women have traditionally undertaken in the home without pay, such as taking care of children, the elderly and disabled, as well as cleaning, cooking, shopping and laundry. For this reason, as well as due to stereotyped perceptions, the skills required for domestic work, which are considered to be “innate” to women, are undervalued or even overlooked, thus resulting in the undervaluation of domestic work.<sup>1745</sup> Domestic work is among the lowest paid occupations in any labour market, with domestic workers typically earning less than half, and sometimes no more than 20 per cent, of average wages.<sup>1746</sup> In *Haiti*, the adoption of the Domestic Work Act resulted in bringing these workers within the scope of the provisions of the Labour Code, including on equal opportunities and on equal remuneration for men and women for work of equal value.<sup>1747</sup> The principle of equal remuneration for work of equal value is to apply to domestic workers, whether nationals or non-nationals, and particular attention should be given to ensuring that domestic work is not undervalued due to gender stereotypes.<sup>1748</sup> There seems to be an absence of job evaluation methods in this area, and the Committee considers that appropriate procedures should be established for ensuring the equitable valuing of domestic work.

### *Promoting job evaluation*

708. Various means have been used to promote or ensure the use of objective job evaluation methods. Gathering appropriate information is a key stage in developing job evaluation methods. In *South Africa*, pursuant to the Employment Equity Regulations, employers are required to report to the Department of Labour on the profile of their workforce and income differentials, and are encouraged in this context to use predetermined job evaluation systems to determine the value of jobs.<sup>1749</sup> Research has been undertaken in some countries to examine job evaluation and its impact on identifying and addressing pay differentials.<sup>1750</sup> A number of tools and guides have also been developed to promote and assist in undertaking job evaluation. For example, in *Belgium*, following the evaluation of the EVA (Analytical Evaluation) projects, tools have been made available to enterprises and the social partners, including guidelines for establishing gender-neutral job classifications, a practical guide entitled “Analytical job classification: A basis for a gender-neutral wage policy” and a “Non-sexist checklist for the evaluation and classification of jobs”.<sup>1751</sup>

<sup>1745</sup> See CEACR, general observation, 2007, para. 2. See, for example, *Cambodia* – CEACR, direct request, 2011; *Costa Rica* – CEACR, direct request, 2008; *Haiti* – CEACR, direct request, 2010; and *Lebanon* – CEACR, direct request, 2010. See also *Remuneration in domestic work*, op. cit.

<sup>1746</sup> *ibid.*

<sup>1747</sup> *Haiti* – CEACR, direct request, 2010.

<sup>1748</sup> See *Lebanon* – CEACR, direct request, 2008. See also *Syrian Arab Republic* – CEACR, direct request, 2011.

<sup>1749</sup> *South Africa* – CEACR, direct request, 2008.

<sup>1750</sup> See, for example, *Finland* – CEACR, direct request, 2011; and *Norway* – CEACR, direct requests, 2008 and 2011.

<sup>1751</sup> *Belgium* – CEACR, direct request, 2009. See also *Lithuania* – CEACR, observation, 2007, regarding the tripartite adoption of the “Methodology for the assessment of jobs and positions”, which is recommended for use by enterprises, institutions and organizations, and for inclusion in collective agreements.



709. In *New Zealand*, the “equitable job evaluation tool”, a gender-neutral system for use in pay investigations and for general use, has been developed with the objective of facilitating better recognition and contribution of female-dominated occupations to the performance of important areas of state services. A voluntary “gender-inclusive job evaluation standard” has also been developed as a practical guide and reference point for ensuring that job evaluation and the remuneration process are carried out in a gender-inclusive way.<sup>1752</sup> In the *Netherlands*, various tools, such as “Quickscan equal pay” and the Management Tool on Equal Remuneration and the Gender-Neutral Job Evaluation Manual, have been developed with a view to assisting employers to carry out objective job evaluation.<sup>1753</sup> In *Portugal*, a methodological guide for the catering and drinks sector has been developed, to provide companies with assistance in the process of job classification with a view to eliminating gender bias and promoting equal remuneration between men and women.<sup>1754</sup>

### Measures for effective application

710. Giving legislative effect to the principle of equal remuneration for men and women for work of equal value is important, but not sufficient to achieve the goal of the Convention.<sup>1755</sup> The Committee welcomes the range of proactive measures taken to implement the Convention in practice in a number of countries. These include inclusion in public procurement, the adoption of codes of conduct, equal pay plans, pay equity schemes, pay equity councils, pay valuation guides, the modernization of public personnel classification schemes, undertaking job evaluation exercises, undertaking surveys to identify areas of wage differentials and granting pay equity benefits to compensate for past pay differentials based on sex, and the issuing of wage guidelines.<sup>1756</sup>

711. It is important also to deal with the persistent underlying causes that still need to be addressed in many countries. Gender stereotypes and occupational segregation, in particular, continue to be major underlying issues affecting the application of both Conventions Nos 100 and 111. A comprehensive approach to the reduction and elimination of pay disparity between men and women involving societal, political, cultural and labour market interventions is required.<sup>1757</sup>

### Addressing underlying causes

712. Some of the underlying causes of pay inequality have been identified as the following: horizontal and vertical occupational segregation of women into lower paying jobs or occupations and lower level positions without promotion opportunities; lower, less appropriate and less career-oriented education, training and skill levels; household and family responsibilities; perceived costs of employing women; and pay structures.<sup>1758</sup> The establishment of centralized minimum standards, narrow pay dispersion and

<sup>1752</sup> *New Zealand* – CEACR, observation, 2008.

<sup>1753</sup> *Netherlands* – CEACR, direct request, 2009.

<sup>1754</sup> *Portugal* – CEACR, direct request, 2009.

<sup>1755</sup> CEACR, General Report, 2001, para. 49.

<sup>1756</sup> *ibid.*, para. 47.

<sup>1757</sup> *ibid.*, para. 49.

<sup>1758</sup> *ibid.*, para. 40.

transparency of pay and promotion structures have been identified as factors that could address the pay structure differences and help reduce the gender pay gap.<sup>1759</sup>

713. In the context of the adoption of the Convention and Recommendation, it was recognized that there are multiple and complex links between the principle of equal remuneration for men and women, and the position and status of men and women more generally in employment and society.<sup>1760</sup> Social stereotypes that deem certain types of work as suitable for men or women are likely to lead to unequal wages for men and women for work of equal value. Such stereotypes, based on traditional assumptions concerning gender roles in the labour market and in society, including those relating to family responsibilities, channel women and men into different education and training and subsequently into different jobs and career tracks. This occupational gender stereotyping results in certain jobs being held almost exclusively by women, resulting in “female jobs” being undervalued for purposes of wage rate determination.<sup>1761</sup> Recalling that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee has asked governments to provide information on the measures taken or envisaged to improve the access of women to a wider range of job opportunities at all levels, including sectors in which they are currently absent or under-represented, with a view to reducing inequalities in remuneration that exist between men and women in the labour market.<sup>1762</sup>

714. *As wage discrimination cannot be tackled effectively unless action is taken simultaneously to deal with its sources, it is important to address equal remuneration in the context of the more general rights and protections regarding equality and non-discrimination set out in Convention No. 111 and the Workers with Family Responsibilities Convention, 1981 (No. 156).* This approach is reflected in Recommendation No. 90, which refers to facilitating the application of the Convention through such measures as ensuring equal access to facilities for vocational guidance, employment counselling, vocational training and for placement; encouraging women to use these facilities; providing welfare and social services for workers with family responsibilities; and promoting equality as regards access to occupations and posts.<sup>1763</sup>

715. A number of initiatives have been taken in the context of promoting equal remuneration between men and women for work of equal value to identify the nature and extent of wage inequality and its underlying causes, with a view to addressing them. In the *United Kingdom*, for example, the review of the government action plan for narrowing the gender pay gap indicated that further action was needed to eradicate gender stereotypes in the education system and to support families to balance work and family life with a view to narrowing the gender pay gap.<sup>1764</sup> Research in *Canada* (New Brunswick), similarly indicated that the main causes of the gender wage gap were outdated societal attitudes and practices, including with respect to the family

<sup>1759</sup> *ibid.*, para. 40.

<sup>1760</sup> *ibid.*, para. 41.

<sup>1761</sup> See, for example, *Saudi Arabia* – CEACR, direct request, 2007. See also *Canada* – CEACR, direct request, 2007; *Japan* – CEACR, observation, 2005; and *United Kingdom* – CEACR, direct request, 2010.

<sup>1762</sup> See, for example, *Barbados* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2011; *Malawi* – CEACR, observation, 2009; *Morocco* – CEACR, direct request, 2005; *Peru* – CEACR, observation, 2011; *Poland* – CEACR, direct request, 2011; *Saudi Arabia* – CEACR, direct request, 2007; *Swaziland* – CEACR, direct request, 2009; and *Sweden* – CEACR, direct request, 2010.

<sup>1763</sup> *Para. 6.*

<sup>1764</sup> *United Kingdom* – CEACR, direct request, 2010. See also paras 749–760 below.

responsibilities of women, the surprisingly limited range of occupations made available to women, and the undervaluation of work traditionally undertaken by women.<sup>1765</sup> Each of these contributing factors was then addressed in the Wage Gap Action Plan, setting out clear and measureable benchmarks and targets for achieving pay equity.<sup>1766</sup>

716. Research in *Burundi* indicated considerable occupational segregation in the informal economy, leading to earnings disparities.<sup>1767</sup> The high proportion of women in the informal economy was also identified in *Peru* as one of the reasons for the gender wage gap.<sup>1768</sup> Initiatives aimed at promoting girls' and women's access to education and vocational training, as well as sensitization programmes to overcome traditional stereotypes regarding the role of women in society, have been recommended by the Committee in this context.<sup>1769</sup>

717. The objective of eliminating wage differentials between men and women is set out in the Act on Equal Pay for Men and Women in *France*, and negotiations need to be undertaken every year in occupational sectors and enterprises to define and schedule measures to eliminate wage differentials.<sup>1770</sup> The Act also contains provisions aimed at reconciling professional and family life in order to tackle the structural obstacles to equality.<sup>1771</sup>

718. In *Japan*, the Government issued voluntary guidelines aimed at eliminating wage disparities between men and women, which stress the need to review the dual career track system and promote family-friendly workplaces. Positive action is recommended to overcome wage disparity caused by the limited access of women to certain positions and by length of service requirements.<sup>1772</sup> A programme to address the gender pay gap, based on the recommendations of a tripartite working group, was adopted in *Finland*, setting out various measures regarding pay systems, occupational sex segregation, equality planning, reconciliation of work and family life and corporate social responsibility.<sup>1773</sup>

719. Analysing the differing educational opportunities for women and men, girls and boys, in practice is also important in addressing their future employment opportunities and possibilities to access higher paying jobs. Such measures have been taken, for example, in *Burkina Faso*, with a national policy on the advancement of women resulting in significant improvements in school attendance rates for girls, a reduction in the segregation of women in the labour market and a reduction in wage inequalities.<sup>1774</sup> In *Yemen*, measures have been taken to increase the income levels of rural women and to

<sup>1765</sup> *Canada* – CEACR, direct request, 2007.

<sup>1766</sup> *Canada* – CEACR, observation, 2009. The benchmarks and targets are linked to changing societal attitudes, increasing the sharing of family responsibilities, reducing the job clustering of women and increasing the use of practices to better value work. See also *Netherlands* – CEACR, observation, 2009.

<sup>1767</sup> *Burundi* – CEACR, direct request, 2009.

<sup>1768</sup> *Peru* – CEACR, observation, 2011.

<sup>1769</sup> See *Burundi* – CEACR, direct request, 2009.

<sup>1770</sup> *France*, Act of 2006 on equal pay for men and women.

<sup>1771</sup> *France* – CEACR, observation, 2008.

<sup>1772</sup> See *Japan* – CEACR, observation, 2005. These guidelines have been recently updated, with a similar focus on addressing the underlying causes of wage disparities.

<sup>1773</sup> *Finland* – CEACR, observation, 2009.

<sup>1774</sup> *Burkina Faso* – CEACR, direct request, 2011.

improve their educational levels in order to improve their access to paid employment.<sup>1775</sup>

### *Proactive measures to promote equal remuneration*

#### National plans and policies

720. The Committee welcomes the adoption by a number of countries of national plans or policies providing specific measures to address the gender pay gap and promote equal remuneration for men and women for work of equal value, including in the *Plurinational State of Bolivia, Estonia, Finland, Honduras, Hungary, Jordan, The former Yugoslav Republic of Macedonia, Madagascar, New Zealand, Slovakia, Slovenia, Spain* and *United Kingdom*.<sup>1776</sup> In *Jordan*, a tripartite-plus national steering committee for pay equity has recently been established charged with the development of a national strategy to promote pay equity, an action plan and implementation mechanisms.<sup>1777</sup> In *Hungary*, the National Strategic Plan on the Promotion of Gender Equality includes among its aims ensuring equal economic independence of women and men, eliminating the gender pay gap and employment disparities, and eliminating gender stereotypes in society.<sup>1778</sup> In *Honduras*, the Gender Equality and Equity Plan envisages the establishment of statutory and institutional machinery to guarantee compliance with the Convention. A gender perspective has also been introduced into the National Decent Employment Plan with the aim of reducing the gender income gap.<sup>1779</sup> The Plan of Action on Pay and Employment Equity in the public service in *New Zealand* provides for pay and employment equity reviews and response plans, which have been undertaken in a number of departments.<sup>1780</sup>

#### Public procurement

721. As it accounts for a large proportion of government expenditure, public procurement can be an effective means of ensuring the respect for the principle of the Convention. Recommendation No. 90 foresees the use of public procurement as a means of ensuring the application of the Convention.<sup>1781</sup> A similar provision is found in Recommendation No. 111 regarding non-discrimination in employment and occupation more generally.<sup>1782</sup> Governments may, when drawing up public contracts for the

<sup>1775</sup> *Yemen* – CEACR, direct request, 2010.

<sup>1776</sup> *Plurinational State of Bolivia* – CEACR, direct request, 2008; *Estonia* – CEACR, direct request, 2011; *Finland* – CEACR, observation, 2009; *Honduras* – CEACR, direct request, 2009; *Hungary* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2010; *New Zealand* – CEACR, direct request, 2010; *Slovenia* – CEACR, direct request, 2010; *Slovakia* – CEACR, direct request, 2011; *Spain* – CEACR, direct request, 2011; and *United Kingdom* – CEACR, direct request, 2010.

<sup>1777</sup> The Jordanian National Steering Committee for Pay Equity (NSCPE) was officially launched on 25 July 2011: see *Jordan* – CEACR, observation, 2012.

<sup>1778</sup> *Hungary* – CEACR, direct request, 2011.

<sup>1779</sup> *Honduras* – CEACR, direct request, 2009.

<sup>1780</sup> *New Zealand* – CEACR, observation, 2010.

<sup>1781</sup> Para. 2(c) provides that the application of equal remuneration for men and women for work of equal value should be ensured with respect to work executed under the terms of public contracts. The linkage between public contracts and wages (including allowances) was addressed in 1949 with the adoption of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94). See *Labour clauses in public contracts*, General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 97th Session, Geneva, 2008.

<sup>1782</sup> Para. 3(b)(ii).

carrying out of public works or the supply of commodities or services, exert a considerable influence on the remuneration of many workers in the private sector.<sup>1783</sup> It is also important to ensure that the keen competition between contractors to win a state contract does not become a motivating factor for using women as cheap labour.<sup>1784</sup>

722. The Committee has received very little information on the inclusion in public contracts of a specific reference to equal remuneration for men and women for work of equal value. It has been able to note, however, that in *Switzerland*, pursuant to the Public Contracts Act, enterprises performing public contracts must guarantee equal remuneration for men and women for work of equal value, and a specific instrument to monitor compliance has been developed in this context.<sup>1785</sup> Tenderers who do not comply with such requirements are excluded from the tendering procedure.<sup>1786</sup> In other countries, while not necessarily referring specifically to the principle of the Convention, there are requirements to address equality or non-discrimination in the procurement process, or to improve the situation of groups that have been historically subject to discrimination.<sup>1787</sup>

### Equal pay audits and plans

723. Given the particular difficulties in having access to pay information, the Committee welcomes and encourages measures requiring information on pay differentials as a means of ensuring transparency, monitoring the pay gap, and as a basis for remedial action, including through the development of a plan addressing equal pay. Such measures are an important means of promoting and ensuring the implementation of the principle of the Convention. These types of requirements are set out in legislation, including in *Canada, Denmark, Finland, Italy, Luxembourg, South Africa, Spain, Sweden, United Kingdom* and *United Republic of Tanzania*.<sup>1788</sup> In *Finland*, for example, the obligation to develop an equality plan is mandatory for both public and private undertakings with more than 30 workers, and must include information that enables workers to monitor the equality situation in the enterprise, including regarding differences in pay, and must set out measures to achieve pay equity and include a review of the impact of measures previously taken.<sup>1789</sup> In *South Africa*, employers are required to submit “income differential statements” as part of employment equity reports, providing data on remuneration for each occupational category and level, disaggregated by sex and race. Some employers are also required to provide information on barriers to

<sup>1783</sup> See General Survey, 1975, para. 83.

<sup>1784</sup> *ibid.*, para. 85.

<sup>1785</sup> See *Switzerland* – CEACR, direct request, 2006 (Public Contracts Act, 1994).

<sup>1786</sup> *Switzerland* – CEACR, direct request, 2009.

<sup>1787</sup> For example, in *Belgium*: Act on gender mainstreaming in all federal policies, Royal Order of 26 January 2010; *Canada*: Federal Contractors Program; *South Africa*: Preferential Procurement Policy Framework Act, 2000; *United Kingdom* – CEACR, direct request, 2004. See also, as referred to in its report under art. 19 of the ILO Constitution, United States: Executive Order 11246 prohibits federal contractors and subcontractors from discriminating in employment decisions on the basis of race, colour, religion, sex or national origin, including with respect to rates of pay, and requires them to take affirmative action to ensure that equal opportunity is provided in all aspects of employment.

<sup>1788</sup> *Canada (Quebec)* – CEACR, observation, 2011; *Denmark* – CEACR, direct request, 2010; *Finland* – CEACR, observation, 2007; *Luxembourg* – CEACR, direct request, 2008; *South Africa* – CEACR, direct request, 2010; *Spain* – CEACR, direct request, 2011; *Sweden* – CEACR, direct request, 2010; *United Kingdom* – CEACR, direct request, 2011; and *United Republic of Tanzania* – CEACR, direct requests, 2006 and 2011.

<sup>1789</sup> *Finland* – CEACR, observation, 2007.

employment equity with respect to remuneration and benefits and regarding affirmative action measures adopted to address them.<sup>1790</sup>

### Sweden – Wage mapping

Discrimination Act, 2008

Chapter 3. Active measures

2. ... Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.

...

10. In order to discover, remedy and prevent unfair gender differences in pay and other terms of employment, every three years the employer is to survey and analyse:

- provisions and practices regarding pay and other terms of employment that are used at the employer's establishment; and
- pay differences between women and men performing work that is to be regarded as equal or of equal value.

The employer is to assess whether existing pay differences are directly or indirectly associated with sex. The assessment is to refer in particular to differences between:

- women and men performing work that is to be regarded as equal; and
- groups of employees performing work that is or is generally considered to be dominated by women, and groups of employees performing work that is to be regarded as of equal value to such work but is not or is not generally considered to be dominated by women.

11. Every three years employers are to draw up an action plan for equal pay in which they report the results of the survey and analysis described in section 10. The plan is to indicate the pay adjustments and other measures that need to be taken to bring about equal pay for work that is to be regarded as equal or of equal value. The plan is to contain a cost estimate and a time plan based on the goal of implementing the necessary pay adjustments as soon as possible and within three years at the latest.

A report on and evaluation of how the planned measures were implemented is to be included in the next action plan.

...

12. Employers are to provide employees' organizations with respect to which they are bound by a collective agreement with the information needed for the organizations to be able to cooperate in the survey, analysis and drawing up of an action plan for equal pay.

724. There are also legislation and collective agreements requiring information and action on equal remuneration with respect to collective agreements. In *Luxembourg*, for example, there is a statutory obligation to negotiate equality plans with regard to employment and remuneration in the framework of collective agreements.<sup>1791</sup> In *Spain*, the legislation establishes the obligation to provide information, whenever a new collective agreement is signed, on the pay structure and measures adopted to promote equality with respect to wages.<sup>1792</sup> A national collective agreement in *Iceland* provides

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<sup>1790</sup> *South Africa* – CEACR, direct request, 2010. See also *Austria*: Equal Treatment for Men and Women Act, as amended in 2010, which also requires annual income reports, which are submitted to the works councils.

<sup>1791</sup> *Luxembourg* – CEACR, direct request, 2008 (Labour Code of 2006).

<sup>1792</sup> *Spain* – CEACR, direct request, 2011 (Royal Decree No. 713/2010 of 28 May 2010).

for a statistical survey of inequalities between men and women in relation to remuneration.<sup>1793</sup>

### Equality and equal pay bodies

725. Bodies established to address pay equity specifically or in the context of equality more generally can have a central role in the promotion and securing of equal remuneration for men and women for work of equal value.<sup>1794</sup> In *Argentina* for example, provincial tripartite commissions on equality of opportunity and treatment have been established and have developed a strategy with the gender wage gap as a priority theme, relying on conceptual, evidence-based and statistical material.<sup>1795</sup> In *Canada*, a joint advisory committee with employer and worker representation has been established in Quebec to advise the Equal Pay Commission regarding making regulations, developing tools to facilitate the achievement or maintenance of pay equity, and addressing any problems in carrying out the Pay Equity Act.<sup>1796</sup> The Equality and Human Rights Commission of the *United Kingdom* has published guidance material and equal pay audit kits.<sup>1797</sup>

### Tools and guides

726. A range of other practical tools, guides and guidelines have been developed to assist workers and employers and their organizations in implementing equal remuneration for men and women for work of equal value, which the Committee considers to have been important in the application of the Convention in practice.<sup>1798</sup> For example in *Germany*, the “Logib-D”, an equal pay self-assessment tool for enterprises, has been developed; guidelines on the implementation of the principle of equal remuneration for work of equal value have also been published, which set out the relevant legal provisions, and provide practical recommendations for the parties to collective bargaining, works councils and workers and employers.<sup>1799</sup> Guidelines entitled “Gender equality in your company: The recipes for success” were published in *Estonia* in order to help employers implement gender equality policies in enterprises, in particular regarding equal remuneration and job evaluation.<sup>1800</sup> The guidelines on Equal Employment Opportunities in *Indonesia* give detailed guidance on how to implement the principle of equal remuneration for men and women for work of equal value.<sup>1801</sup> The Tripartite Alliance for Fair Employment Practices in *Singapore* has issued guidelines, including on paying employees wages commensurate with the value of the job, irrespective of age, gender, race, religion and family status.<sup>1802</sup> In *Japan*, consultations

<sup>1793</sup> *Iceland* – CEACR, direct request, 2011.

<sup>1794</sup> Regarding specialized bodies, see paras 877–882 below.

<sup>1795</sup> *Argentina* – CEACR, direct request, 2009.

<sup>1796</sup> *Canada* – CEACR, observation, 2011. See also *Canada* – CEACR, direct request, 2009: a number of labour–management pay equity committees have been established, the mandates of which include recommending a job evaluation tool and methodology, conducting job analysis, and making recommendations.

<sup>1797</sup> *United Kingdom* – CEACR, direct request, 2011.

<sup>1798</sup> A number of tools are related specifically to job evaluation methods: see paras 708–709 above.

<sup>1799</sup> *Germany* – CEACR, direct requests, 2011 and 2008. The Ministry of Equality of Opportunities of *Luxembourg* also makes software available to enterprises to identify wage inequalities (report under art. 19 of the Constitution).

<sup>1800</sup> *Estonia* – CEACR, direct request, 2011.

<sup>1801</sup> *Indonesia* – CEACR, observation, 2007.

<sup>1802</sup> *Singapore* – CEACR, direct request, 2010.

on “Guidelines for Eliminating Differences in Wages Between Males and Females” were recently undertaken between representatives of the Government, employers and workers in the context of the Equal Employment Opportunity Subcommittee.<sup>1803</sup>

### Incentives

727. Incentives to promote the voluntary implementation of the principle of the Convention can take many forms. Some examples include providing grants, certifying employers, providing awards or equality labels linked to equal remuneration for work of equal value. In *Spain*, government grants have been awarded to small and medium-sized enterprises for use in the formulation and implementation of equality plans; a “badge for equality” has also been introduced which recognizes measures for achieving equality adopted by enterprises, taking into account factors such as the adoption of an equality plan, sex disaggregated pay data, and the application of systems and criteria relating to occupational classification and pay.<sup>1804</sup> Certification systems or equality labels for “equality employers” have been established recently in *Argentina*, *Belgium*, *France*, *Mexico* and *Spain*, and specifically for wage equality or equal pay in *Iceland* and *Switzerland*.<sup>1805</sup>

### Awareness raising and public information

728. Awareness-raising activities on labour rights in general and on gender equality or the rights of women workers are increasingly being carried out by the public authorities, social partners, non-governmental organizations and women’s associations in many countries, targeting workers, employers and their organizations, and the general public.<sup>1806</sup> While the specific issue of equal remuneration between men and women appears to be more rarely addressed in this context, there have been some significant initiatives aimed at promoting the principle of the Convention. For instance, in the *Dominican Republic*, the Secretariat of State for Labour implements ad hoc programmes for employers and workers to raise awareness of equality of remuneration that has to be achieved in the world of work. These programmes include radio and television publicity campaigns, brochures, posters and targeted workshops organized jointly by the Department for Gender Equity and the Directorate of Industrial Relations.<sup>1807</sup>

### Collective agreements

729. Examining collective agreements from the perspective of equal remuneration for work of equal value can be a useful first step towards addressing the issue through the collective bargaining process. In *Cyprus*, employers’ and workers’ organizations were invited to examine the compliance of the provisions of collective agreements with the equal pay legislation.<sup>1808</sup> In *Singapore*, the tripartite partners have recommended the

<sup>1803</sup> *Japan*, report under art. 19 of the Constitution.

<sup>1804</sup> *Spain* – CEACR, direct request, 2011. See also *Iceland*: The Ministry of Equality of Opportunities offers financial support to enterprises engaged in an analysis of recruitment, working conditions, training and job evaluation (report under art. 19 of the Constitution).

<sup>1805</sup> *Argentina* – CEACR, direct request, 2011; *Belgium* – CEACR, direct request, 2011; *France* – CEACR, direct requests, 2008 and 2011; *Iceland* – CEACR, direct request, 2011; *Mexico* – CEACR, direct request, 2011; *Spain* – CEACR, direct request, 2011; and *Switzerland* – CEACR, direct request, 2008.

<sup>1806</sup> See, for example, *Burundi* – CEACR, direct request, 2011; and *Gabon* – CEACR, direct request, 2010.

<sup>1807</sup> *Dominican Republic* – CEACR, direct request, 2011. See also, *Afghanistan* – CEACR, observation, 2011; *Dominica* – CEACR, direct request, 2010; *Netherlands* – CEACR, direct request, 2006; *Spain*, direct request 2007; and *United Kingdom* – CEACR, direct request, 2007.

<sup>1808</sup> *Cyprus* – CEACR, direct request, 2011.



inclusion of an equal pay clause in collective agreements, and this is promoted through the website of the Industrial Arbitration Court, which also proposes a model clause.<sup>1809</sup> In *Uruguay*, the Tripartite Commission on Equality of Opportunity and Treatment in Employment unanimously decided to include an equality clause in the wage board round. Under this clause, which is included in collective agreements, the parties agree to promote compliance with Conventions Nos 100 and 111, the Maternity Protection Convention (Revised), 1952 (No. 103), and Convention No. 156, and the MERCOSUR Social and Labour Declaration.<sup>1810</sup> A union initiative in *Denmark* with respect to the design of an Equal Pay Strategy contains a range of measures including with respect to addressing equal pay through collective agreements.<sup>1811</sup>

730. Recalling the need for effective measures in order to accomplish real progress in attaining equal remuneration for men and women for work of equal value, the Committee encourages governments, in cooperation with the social partners, to promote and ensure the principle of the Convention through a range of proactive measures, adapted to the national context.

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<sup>1809</sup> *Singapore* – CEACR, direct request, 2008.

<sup>1810</sup> *Uruguay* – CEACR, observation, 2010.

<sup>1811</sup> *Denmark* – CEACR, direct request, 2011.

## Chapter 3

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### Equality of opportunity and treatment in employment and occupation (Convention No. 111)

#### Introduction

731. Discrimination in employment and occupation is a universal phenomenon and is constantly evolving. Some manifestations of discrimination have acquired more subtle and less visible forms. New forms of discrimination are arising, and others which may be long standing, have only recently been acknowledged. Effectively responding to the complex realities and varieties of ways in which discrimination occurs thus requires the adoption of a range of measures. *As a first step, it is essential to acknowledge that no society is free from discrimination and that continuous action is required to address it.*

732. The principal objective of Convention No. 111 is to eliminate all discrimination, as defined in the Convention, in respect of all aspects of employment and occupation, through the concrete and progressive development of equality of opportunity and treatment in law and in practice. With a view to achieving the elimination of discrimination in employment and occupation, States are required to develop and implement a multi-faceted national equality policy. *The implementation of the national equality policy presupposes the adoption of a range of specific and concrete measures, including in most cases the need for a clear and comprehensive legislative framework, and ensuring that the right to equality and non-discrimination is effective in practice. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from deeply entrenched discrimination.*

#### Scope of the Convention and methods of application

##### Scope of application

733. The purpose of Convention No. 111 is to protect all persons against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin, with the possibility of extending its protection to discrimination on the basis of other grounds. No provision in the Convention limits its scope as regards individuals or branches of activity. During the discussions of the instrument, a proposal to delete the term “occupation” so as to exclude “independent employment” from its scope was rejected twice based on the explanations provided by the Office that it would hardly seem right for a Convention “not to give to workers wishing to be self-employed any protection against laws, regulations or

practices arbitrarily preventing them from doing so”.<sup>1812</sup> Convention No. 111 thus applies to all workers, both nationals and non-nationals, in all sectors of activity, in the public and the private sectors, and in the formal and informal economy.

## Methods of application

734. The primary obligation of States that have ratified Convention No. 111 is to declare and pursue a national equality policy, “by methods appropriate to national conditions and practice” (*Article 2*). The Convention thus leaves considerable flexibility to each country regarding the adoption of the most appropriate methods from the point of view of their nature and timing.<sup>1813</sup> However, the objectives to be pursued cannot be compromised. The State cannot remain passive and implementation is measured by the effectiveness of the national policy and the results achieved.<sup>1814</sup>

735. *Article 3* sets out some of the means of action to be covered by the national policy, including the enactment of legislation and the promotion of such educational programmes as may be calculated to secure the acceptance and observance of the national policy (*Article 3(b)*). Recommendation No. 111 also provides for the formulation and application of a national policy for the prevention of discrimination “by means of legislative measures, collective agreements [...], or in any other manner consistent with national conditions and practice”.<sup>1815</sup> Convention No. 111 leaves it to each country to decide which legislative measures are appropriate to implement the national policy. Nonetheless, while the Convention does not impose a strict obligation to legislate in all of the areas covered, it does require the State to review whether legislation is needed to secure the acceptance and observance of the policy. The necessity of legislative measures to give effect to the Convention must thus be assessed within the framework of the national policy as a whole, having regard in particular to the other types of measures which may have been taken, and to the effectiveness of the overall action pursued, including whether there are adequate and effective means of redress and remedies.<sup>1816</sup> The enactment of constitutional or legislative provisions or regulations continues to be one of the most widely used means to give effect to the principles of the Convention.<sup>1817</sup>

736. In previous surveys, the Committee underlined the importance of collective agreements in applying the national policy on equality,<sup>1818</sup> and in this context the outcome of cooperation with workers’ and employers’ organizations is evident. Recommendation No. 111 states that the parties to collective bargaining should ensure “that collective agreements contain no provisions of a discriminatory character in respect

<sup>1812</sup> *Record of Proceedings*, ILC, 40th Session, Geneva, 1957, Appendix X, p. 743, paras 17–19; *Record of Proceedings*, ILC, 42nd Session, Geneva, 1958, Appendix VI, p. 711, paras 15 and 16; and *Discrimination in the field of employment and occupation*, Report IV(1), ILC, 42nd Session, Geneva, 1958, Appendix.

<sup>1813</sup> General Survey, 1988, para. 160.

<sup>1814</sup> See *ibid.*, para. 157, where the Committee stated that the “criterion for application of the Convention should be whether unequivocal results are achieved in pursuing equality of opportunity and treatment in employment and occupation ...”.

<sup>1815</sup> See Recommendation No. 111, *Para. 2*.

<sup>1816</sup> *Discrimination (Employment and Occupation)*, General Conclusions on the reports relating to Convention No. 111 and Recommendation No. 111 concerning Discrimination in respect of Employment and Occupation, 1958, Part Three of the Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 47th Session, Geneva, 1963, para. 76; General Survey, 1988, para. 171.

<sup>1817</sup> See paras 850–855.

<sup>1818</sup> See, for example, General Survey, 1988, paras 189–191.

of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment”.<sup>1819</sup> Some collective agreements have non-discrimination clauses or provide specifically for equality with respect to certain grounds referred to in the Convention.<sup>1820</sup> In *Argentina*, the General Collective Labour Agreement for the Central Public Administration includes provisions regarding the parties’ agreement to eliminate any measure or practice which produces discriminatory treatment or inequality between workers based on a wide range of grounds, in access to employment and during the employment relationship.<sup>1821</sup>

737. In some countries, legislation may expressly require collective agreements to promote equality of opportunity and treatment. For example, in *Luxembourg*, the Labour Code provides that collective agreements must include provisions incorporating the results of negotiations concerning measures to apply the principle of equality between women and men in undertakings or enterprises to which the agreement applies.<sup>1822</sup> Under the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men in *Ukraine*, collective agreements and contracts should contain provisions promoting gender equality and time lines for the implementation of such provisions.<sup>1823</sup> In a number of countries, legislation may also interact with collective agreements in stipulating that discriminatory provisions in collective agreements are null and void,<sup>1824</sup> or making it possible to extend the effects of a collective agreement, including its equality provisions, to other employers and workers. Nonetheless, considering the scarce information provided on the application of the national equality policy through collective agreements, the Committee encourages governments to seek actively cooperation with workers’ and employers’ organizations with a view to providing this information on a more regular basis in their reports under article 22 of the Constitution.

### Difficulties in application

738. Like Convention No. 100, difficulties relating to the scope of application of Convention No. 111 often relate to the exclusion of certain groups from the scope of labour law and employment law, including provisions on equality and non-discrimination. From a review of the existing legislation, the Committee observes that the categories of workers and types of occupations or branches of activities most frequently excluded from the protection from discrimination on the grounds set out in Convention No. 111 are public servants,<sup>1825</sup> domestic workers,<sup>1826</sup> certain agricultural

<sup>1819</sup> *Para. 2(e)*.

<sup>1820</sup> See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2007: the National Inter-occupational Collective Labour Agreement provides that women shall enjoy the same rights at work as men in accordance with the legal provisions and regulations.

<sup>1821</sup> *Argentina* – CEACR, observation, 2009. See also *New Zealand* – CEACR, direct requests, 2007, 2009 and 2012 regarding the monitoring of equal employment opportunities (EEO) provisions in collective agreements.

<sup>1822</sup> *Luxembourg* – CEACR, observation, 2008.

<sup>1823</sup> *Ukraine* – CEACR, observation, 2011; see also *United Republic of Tanzania* – CEACR, observation, 2009: the Employment and Labour Relations (Code of Good Practice) Rules, 2007, provide that collective agreements shall not contain provisions which discriminate against employees on any of the prohibited grounds in the Employment and Labour Relations Act, 2004.

<sup>1824</sup> See, for example, *Cyprus* – CEACR, observation, 2007. See also para. 662 above.

<sup>1825</sup> See, for example, *Antigua and Barbuda* – CEACR, direct request, 2010; *Benin* – CEACR, direct request, 2011; *Cambodia*, direct request, 2011; and *Turkey* – CEACR, direct request, 2008. In its report under art. 19 of the Constitution, the Government of Thailand indicates that the Labour Protection Act 1998 excludes public sector employees (section 4).

workers,<sup>1827</sup> casual workers,<sup>1828</sup> self-employed workers,<sup>1829</sup> informal economy workers and non-citizens.<sup>1830</sup> Other categories of workers often excluded from the scope of general labour legislation include members of the judiciary, the armed forces, the police force, and sometimes more generally “any worker governed by specific laws or regulations”.<sup>1831</sup> Labour laws are also generally limited to wage-earning employment, which accounts, in many countries, only for a limited proportion of the active population.

739. Excluding certain categories or sectors from the scope of general labour law may adversely affect primarily workers of a particular sex or ethnic origin. The Committee has observed that in a number of countries women are concentrated in the agricultural sector or in domestic work, and are highly represented among casual or informal economy workers. In countries where migrant workers constitute an important proportion of the seasonal workers in the agricultural sector or among domestic workers, the exclusions of these categories could constitute indirect discrimination. The application of Convention No. 111 in both law and practice remains a challenge in the informal economy. In a number of countries, concerns have been raised regarding the concentration of women in the informal economy and the difficulties encountered by them in securing formal employment.<sup>1832</sup> In others, women in the informal economy face disadvantages and obstacles relating to access to credit, family obligations and over-qualification for their work, or face sexual harassment.<sup>1833</sup> Difficulties have also been noted regarding the situation of the Roma and of foreign women working in the informal economy in securing the right to enter the labour market.<sup>1834</sup>

740. Where there is a large informal economy, the Committee has considered that more specific information, including statistics disaggregated by sex, is required on the employment situation of informal economy workers or on specific measures taken to promote their access to training and employment opportunities,<sup>1835</sup> including measures enabling women to move from the informal to the formal economy.<sup>1836</sup> The full

<sup>1826</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; *Egypt* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2011; *Ireland* – CEACR, observation, 2009; *Kuwait* – CEACR, observation, 2011; and *Morocco* – CEACR, direct request, 2009.

<sup>1827</sup> See, for example, *Syrian Arab Republic* – CEACR, direct request, 2011; and *Yemen* – CEACR, direct request, 2011. See also *Saudi Arabia* – CEACR, observation, 2009, where the Committee noted that the Labour Law of 1969 also excludes “incidental, seasonal and temporary workers”; *Syrian Arab Republic* and *Saudi Arabia* also exclude part-time workers from the scope of their labour law.

<sup>1828</sup> See, for example, *Angola* – CEACR, direct request, 2008; and *Syrian Arab Republic* – CEACR, direct request, 2011.

<sup>1829</sup> See, for example, *Kenya* – CEACR, observation, 2010; *Malawi* – CEACR, direct request, 2006; and *Zimbabwe* – CEACR, direct request, 2007.

<sup>1830</sup> See, for example, *Sri Lanka* – CEACR, observation, 2010; and *Swaziland* – CEACR, direct request, 2010.

<sup>1831</sup> See, for example, *Burkina Faso* – CEACR, direct request, 2011; *Côte d’Ivoire* – CEACR, direct request, 2011; *Fiji* – CEACR, direct request, 2008 and the Conference Committee on the Application of Standards, conclusions, Convention No. 111, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2010.

<sup>1832</sup> See, for example, *Mali* – CEACR, direct requests, 2009 and 2011; *Morocco* – CEACR, observation, 2007; *Niger* – CEACR, direct request, 2010; and *Sri Lanka* – CEACR, observation, 2009.

<sup>1833</sup> See, for example, *Mali* – CEACR, direct request, 2009; and *Mongolia* – CEACR, direct request, 2010.

<sup>1834</sup> See, for example, *Serbia* – CEACR, direct request, 2010 (Roma); and *Spain* – CEACR, observation, 2009 (foreign women).

<sup>1835</sup> See, for example, *Angola* – CEACR, observation, 2011, and direct request 2008; *Albania* – CEACR, observation, 2011; *Botswana* – CEACR, observation, 2010; *Brazil* – CEACR, observation, 2004; *Fiji* – CEACR, direct request, 2008; *Honduras* – CEACR, direct request, 2010; and *Indonesia* – CEACR, direct request, 2011.

<sup>1836</sup> See, for example, *Pakistan* – CEACR, observation and direct request, 2010.

application of the principle of equality in employment and occupation to workers in the informal economy will require significant efforts.

741. Convention No. 111 clearly emphasizes the application of the national equality policy in respect of employment under the direct control of the national authority. In many countries provisions on discrimination or equality in the labour law, or dedicated laws on equality, specifically cover the public sector or do not exclude it. Nonetheless, there may still be exclusions of certain groups of workers in the public service, such as those in state or local authorities, or of public servants in general. Laws and regulations covering the public service may not include specific provisions prohibiting discrimination, or may provide protection only with respect to some grounds or regarding some aspects of employment.<sup>1837</sup> Limitations on access based on political affiliation, restrictions on women's employment, as well as occupational segregation, with few women in high level posts in the public service,<sup>1838</sup> and limited access of some minority groups to public service jobs, have been obstacles to implementation of the Convention in some countries.<sup>1839</sup>

742. Where certain categories of workers are excluded from general labour or employment law, it needs to be determined whether special laws or regulations apply to such groups, and whether they provide the same level of rights and protection as the general provisions.<sup>1840</sup> In some cases, protection is provided only in respect of certain grounds or certain aspects of employment.<sup>1841</sup> In the absence of specific laws or regulations, some of the above groups may enjoy protection under dedicated equality or anti-discrimination laws.<sup>1842</sup> However, even in the case of specific equality or non-discrimination legislation covering employment and occupation, the Committee has found that certain categories of workers are excluded from its scope of application,<sup>1843</sup> or that the scope is limited in relation to the size of the enterprise.<sup>1844</sup> *In the absence of*

<sup>1837</sup> See, for example, *Afghanistan* – CEACR, observation, 2011; *Armenia* – CEACR, direct request, 2010; and *Guinea* – CEACR, observation, 2010.

<sup>1838</sup> For example, *Chile* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2009; *El Salvador* – CEACR, observation, 2009; *France (New Caledonia)* – CEACR, direct request, 2011; *Lithuania* – CEACR, observation, 2010; *Paraguay* – CEACR, direct request, 2009; and *Philippines* – CEACR, observation, 2011.

<sup>1839</sup> For example, *France* – CEACR, observation, 2011; *Latvia* – CEACR, observation, 2009; and *New Zealand* – CEACR, direct request, 2010.

<sup>1840</sup> See, for example, *Eritrea* – CEACR, direct request, 2011 (civil servants, domestic workers); *Jordan* – CEACR, direct request, 2011 (agricultural workers, domestic workers, gardeners, cooks); *Morocco* – CEACR, direct request, 2009 (domestic workers), where the Committee has been requesting the Government to ensure that new or draft legislation provides for effective protection.

<sup>1841</sup> See, for example, *Afghanistan* – CEACR, observation, 2011, where the Committee noted that the new Civil Servants Law, 2008, does not cover all the grounds of discrimination and only appears to provide protection against discrimination in respect of recruitment.

<sup>1842</sup> See, for example, *Iceland*, Act on Equal Status and Equal Rights of Women and Men of 2008; *Malta*, Equal Treatment in Employment Regulations of 2004; *Norway*, Gender Equality Act and Anti-Discrimination Act of 2005.

<sup>1843</sup> See, for example, *Ireland* – CEACR, observation, 2010, where the Committee considered that the exemption contained in section 2 of the Employment Equality Act deprives certain domestic workers from protection against discrimination in respect of access to employment.

<sup>1844</sup> In its report under art. 19 of the Constitution, the United States indicates that Title VII of the Civil Rights Act of 1964, prohibiting employment discrimination based on race, colour, religion, sex, and national origin (section 703), only applies to employers engaged in an industry affecting commerce which have 15 or more employees for each working day in each of 20 or more calendar weeks (section 701); see also *Republic of Korea*: the Enforcement Decree of the Equal Employment Act of 1987.

*a clear legislative framework supporting equality and non-discrimination, it needs to be shown how such rights are ensured for the above groups in practice. Despite some progress, from the information available, the Committee has found that many of the above categories of workers are largely left unprotected against discrimination, in law or in practice,<sup>1845</sup> and recalls the obligation of governments to ensure and promote the application of the principles of the Convention to all workers.*

## Thematic issues

### Defining discrimination

743. *Clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur.* Article 1(1)(a) of the Convention defines discrimination as “any distinction, exclusion or preference made on the basis of [certain grounds], which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. Through this broad definition, the Convention covers all discrimination that may affect equality of opportunity and treatment. Any discrimination – in law or in practice, direct or indirect – falls within the scope of the Convention.

### *Direct and indirect discrimination*

744. Direct discrimination occurs when less favourable treatment is explicitly or implicitly based on one or more prohibited grounds. It includes sexual harassment<sup>1846</sup> and other forms of harassment. It is encouraging that legislation in a growing number of countries including *Canada* (Quebec)<sup>1847</sup> and the *United Kingdom*<sup>1848</sup> expressly prohibits and defines “harassment” in respect of any of the prohibited grounds of discrimination, as a form of direct discrimination. “Harassment” in the context of discrimination in employment and occupation has also been addressed through codes of good practice and action plans, for example in Latin America.<sup>1849</sup>

745. Indirect discrimination refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the

<sup>1845</sup> In some cases, the Committee has considered that further information was needed to demonstrate that migrant workers or domestic workers were effectively protected against discrimination in employment and occupation: *Jordan* – CEACR, direct request, 2011; and *Republic of Korea* – CEACR, observation, 2008. See also, for example, *Côte d’Ivoire* – CEACR, direct request, 2010, regarding the lack of protection of public servants and workers without employment contracts.

<sup>1846</sup> See paras 789–794 below.

<sup>1847</sup> Act respecting Labour Standards 2004 (section 81.18).

<sup>1848</sup> Equality Act, 2010 (section 26). The majority of European Union Member States and candidate countries have adopted definitions of harassment similar to those included in Articles 2(3) of the European Council Directive 2000/43/EC (The Race Directive) and the European Council Directive 2000/78/EC (the Framework Directive), and Article 2(1)(c) of the European Council Directive 2006/54/EC (The Recast Directive). Under these EC Directives, harassment is considered to be discrimination when unwanted conduct related to the sex of a person (or racial or ethnic origin, religion or belief, disability, age or sexual orientation) takes place with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

<sup>1849</sup> See *Chile* – CEACR, direct request, 2009; and *Costa Rica* – CEACR, direct request, 2009.

inherent requirements of the job.<sup>1850</sup> In referring to the “effect” of a distinction, exclusion or preference, it is clear that intention to discriminate is not an element of the definition in the Convention, which covers all discrimination irrespective of the intention of the author of a discriminatory act. The Convention also covers situations in which inequality is observed in the absence of a clearly identifiable author, as in some cases of indirect discrimination or occupational segregation based on sex. Challenges related to structural discrimination therefore need to be addressed under the Convention.<sup>1851</sup>

746. While progress has been made in many countries in defining direct discrimination in national legislation, the concept of indirect discrimination does not appear to be well understood and recognized in some regions and some countries. Legal provisions do not always cover the concept of indirect discrimination, or are ambiguous in this regard.<sup>1852</sup> The concept of indirect discrimination is however imperative to identify and address situations in which certain treatment is extended equally to everybody, but leads to discriminatory results for one particular group protected by the Convention, such as women, ethnic and religious groups, or persons of a certain social origin.<sup>1853</sup> Such discrimination is subtle and less visible, making it even more important to ensure there is a clear framework for addressing it, and proactive measures are required to eliminate it.<sup>1854</sup> In some cases, national courts have been guided by the Convention in determining the meaning of indirect discrimination.<sup>1855</sup> In others, where a legal definition of indirect discrimination is absent or unclear, the Committee has asked governments to indicate how protection of workers against such discrimination is being ensured, including by the courts.<sup>1856</sup> When no information is available on relevant judicial decisions in this regard, the Committee has asked governments to consider amending the legislation to provide for an explicit prohibition of indirect discrimination and to include provisions aimed at eliminating such discrimination.

747. The Committee welcomes the recent initiatives explicitly prohibiting and defining direct and indirect discrimination in national legislation. Considerable progress has been made including in *Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and United Kingdom* in light of the relevant European Council Directives on equality.<sup>1857</sup> Other countries which have

<sup>1850</sup> Special Survey, 1996, para. 26.

<sup>1851</sup> Under the Convention, the national policy also needs to address discriminatory practices and inequalities that are the result of complex social patterns, institutional structures, policies and legal constructs. See *Time for equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 96th Session, Geneva, 2007, para. 31. See also *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Zambia* – CEACR, direct request, 2011.

<sup>1852</sup> See, for example, *China* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2011.

<sup>1853</sup> The exclusion of employment categories or sectors in which women predominate from minimum wages or from the labour law more generally could constitute indirect discrimination against women: see paras 684, 739 and 796. Common height and athletic requirements are also likely to constitute indirect discrimination against women: see para. 788 below.

<sup>1854</sup> See para. 856 below.

<sup>1855</sup> The Federal Court of Australia in *Commonwealth of Australia v. Human Rights & Equal Opportunity Commission*, ruling in a case relating to age discrimination with respect to promotion, used Convention No. 111 and related comments of the ILO supervisory bodies as a guide to determine that indirect discrimination was covered by the term “discrimination” in section 3(1) of the Human Rights and Equality of Opportunity Law, 1986 (15 December 2000 [2000] FCA 1854, paras 29, 30, 35–45).

<sup>1856</sup> See, for example, *Turkmenistan* – CEACR, direct request, 2011.

<sup>1857</sup> See Art. 2(2)(a) and (b) of Directive 2000/43/EC, Art. 2(2)(a) and (b) of Directive 2000/78/EC and Art. 2(1)(a) and (b) of Directive 2006/54/EC.



defined both direct and indirect discrimination include *Fiji, Iceland, Kenya, Namibia, Norway* and *The former Yugoslav Republic of Macedonia*.

### *Multiple discrimination*

748. *The Committee has consistently emphasized the need to take into consideration and address the effects of multiple discrimination. Practice has shown that in the context of employment and occupation, some grounds of discrimination are not necessarily revealed by distinctive external features, and many individuals may be subject to discrimination based on more than one ground.* Sex-based discrimination frequently interacts with other forms of discrimination or inequality based on race, national extraction, social origin or religion, or even age, migrant status, disability or health. Addressing multiple discrimination, including through legislation, remains a challenge. Legal approaches requiring each prohibited ground to be addressed separately and independently may prove to be inadequate to capture the manner in which individuals experience discrimination on multiple grounds. While many laws define discrimination with respect to a multitude of grounds, few offer the possibility of filing complaints of discrimination on combined grounds. Only a few countries have attempted to address the concept of multiple discrimination in legislation, including in *Croatia*, where the Anti-Discrimination Act refers to “more serious forms of discrimination” including multiple discrimination, which it defines. It also provides that such elements should be taken into account by the courts when determining the compensation for the victim and the fine to be imposed.<sup>1858</sup> Under the legislation of some countries, public authorities have a positive duty to address multiple discrimination.<sup>1859</sup>

### Aspects of employment and occupation covered by the Convention

749. The principle of equality of opportunity and treatment should apply to all aspects of employment and occupation. Under *Article 1(3)* of the Convention “employment” and “occupation” include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. The Committee draws attention to its previous surveys of 1988 and 1996 which address in detail the various areas covered by the Convention.<sup>1860</sup> In the present Survey, the Committee will therefore focus on some key issues in this area and on recent developments.

### *Education, vocational guidance and training*

750. Access to education and to a wide range of vocational training courses is of paramount importance for achieving equality in the labour market. It is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. Not only do apprenticeships<sup>1861</sup> and technical education need to be addressed, but also general education, “on the job training” and the actual process of training. **Providing**

<sup>1858</sup> *Croatia* – CEACR, observation, 2011: Section 6(1) defines multiple discrimination as “discrimination against certain persons on more than one of the grounds referred to in Article 1(1) of this Act”. Similar definitions are found in the Act on Equal Opportunities of *Romania* (section 4) and the Protection against Discrimination Act of *Bulgaria* (section 11). The Equal Treatment Act (private sector) and Federal Equal Treatment Act (Federal Public Sector) of *Austria* also take into account multiple discrimination when determining compensation.

<sup>1859</sup> In addition to *Bulgaria*, see also *Spain*, section 14.6 of Law 3/2007 on Effective Equality between Men and Women.

<sup>1860</sup> General Survey, 1988, paras 76–123; Special Survey, 1996, paras 65–116.

<sup>1861</sup> See, for example, *Dominican Republic* – CEACR, direct request, 2009; *New Zealand* – CEACR, observation, 2010.

*vocational guidance and taking active measures to promote access to education and training, free from considerations based on stereotypes or prejudices, is essential in broadening the range of occupations from which men and women are able to choose.*<sup>1862</sup>

751. Due consideration should be given to the particular needs of certain population groups. If parts of the population are prevented from attaining the same level of education as others, these differences will impact on future employment opportunities. Accordingly, universal education, compulsory and free of charge to the same level for all, should be one of the fundamental elements of a policy of equality of opportunity and treatment in employment and occupation.<sup>1863</sup> In a number of countries, the Committee has considered that more proactive measures should be taken to facilitate and encourage the access of women and girls to more diversified vocational training, including courses leading to occupations in which men have traditionally been employed.<sup>1864</sup>

#### *Access to employment and to particular occupations*

752. The Convention covers access to wage-earning employment (including the public service) and to non-wage work.<sup>1865</sup> “Persons in employment” include “all persons above a specified age who were at work”, and “work” includes “not only persons whose status is that of employee” but also persons whose status is that of “worker on own account”, an “employer” or an “unpaid family worker”.<sup>1866</sup> The term “occupation” is understood to mean the trade, profession or type of work performed by the individual, irrespective of the branch of economic activity to which he or she belongs or of his or her professional status.<sup>1867</sup> Traditional occupations, for example those pursued by indigenous peoples, such as subsistence farming, handicraft production or hunting, are also “occupations” within the meaning of the Convention.

753. The Convention expressly addresses gaining access to employment or to particular occupations, which includes equal access to, and equal treatment by, placement services (and other measures promoting employment), non-discrimination and equal opportunities in selection and recruitment processes, and equal access to particular occupations. The placement and consideration of candidates by public and private employment agencies without discrimination on the grounds set out in the Convention is essential, and the important role of the State in this context is expressly recognized in the 1958 instruments.<sup>1868</sup> Some steps have been noted to ensure equal access of certain

<sup>1862</sup> See, for example, *Bahamas* – CEACR, direct request, 2011; *Bahrain* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2010; *Morocco* – CEACR, direct request, 2009; and *Nepal* – CEACR, direct request, 2009.

<sup>1863</sup> See, for example, *El Salvador* – CEACR, direct request, 2009; and *Namibia* – CEACR, direct request, 2010 (free education targeting San and Himba communities).

<sup>1864</sup> See *Afghanistan* – CEACR, observation, 2011; *Bahamas* – CEACR, direct request, 2011; *Bahrain* – CEACR, direct request, 2010; *Bangladesh* – CEACR, observation, 2011; *Cameroon* – CEACR, direct request, 2010; *Dominican Republic* – CEACR, direct request, 2009; *Egypt* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2009; *Haiti* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2010; *Madagascar* – CEACR, direct request, 2009; *Malta* – CEACR, direct request, 2011; *Morocco* – CEACR, direct request, 2009; *Nepal* – CEACR, direct request, 2009; and *Zambia* – CEACR, direct request, 2009.

<sup>1865</sup> Special Survey, 1996, para. 81.

<sup>1866</sup> *ibid.*, para. 79.

<sup>1867</sup> *ibid.*, para. 79; General Survey, 1988, para. 86.

<sup>1868</sup> Convention, Art. 3(e); Recommendation No. 111, Para. 3(b). With respect to the role of private employment agencies in promoting non-discrimination, the Committee draws attention to the Private Employment Agencies Convention, 1997 (No. 181), which requires member States to ensure that these agencies treat workers without

groups to placement services, or to have placement services address particular issues of discrimination.<sup>1869</sup>

754. The application of the principle of equality guarantees every person the right to have his or her application for a chosen job considered equitably, without discrimination based on any of the grounds of the Convention. The recruitment procedures are of considerable importance in the application of this right and only objective recruitment criteria should be used in the choice of the candidate.<sup>1870</sup> Discriminatory job advertisements remain a major concern,<sup>1871</sup> and some countries, for example the *Ukraine*, have tried to address this through the adoption of specific legal provisions prohibiting discriminatory job advertisements or seeking information on the private life of job applicants.<sup>1872</sup>

755. To address occupational segregation and improve equality of access to public service positions, a number of measures have been put in place, including for women in *Chile*, *Fiji*, *Ghana*, *Republic of Korea*, *Pakistan* and the *Philippines*; for indigenous peoples in *Australia*; for particular castes and tribes in *India*; and for certain minority groups in *Ethiopia* and *Israel*.<sup>1873</sup> These measures include targets, quotas, equal employment opportunity plans, improving and adapting relevant facilities, and improving the collection of statistical information. With respect to public companies, in *Norway* a requirement was introduced to ensure balanced representation of men and women on their boards, resulting in the achievement of a 40 per cent share of women on these boards from 7 per cent a year earlier.<sup>1874</sup>

756. Addressing non-wage work is essential as this category covers the majority of the active population in certain countries, principally in the rural sector, and covers various occupations and professions. Promoting and ensuring access to material goods and services required to carry out an occupation, such as access to land, credit and resources should therefore be part of the objectives of a national policy on equality.<sup>1875</sup> The Committee has noted progress in a number of countries where measures have been taken, sometimes through express attention in national equality plans, to improve access of

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discrimination on the basis of the grounds set out in Convention No. 111, or any other form of discrimination covered by national law and practice, such as age or disability (*Art. 5(1)*).

<sup>1869</sup> See *Denmark* – CEACR, direct request, 2011; *Mexico* – CEACR, direct request, 2009; and *Montenegro* – CEACR, direct request, 2011.

<sup>1870</sup> Special Survey, 1996, para. 82.

<sup>1871</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; *Georgia* – CEACR, observation, 2010; *Islamic Republic of Iran* – CEACR, observation, 2011; *Mexico* – CEACR, observation, 2006; *Mongolia* – CEACR, direct request, 2011; and *Qatar* – CEACR, observation, 2010.

<sup>1872</sup> *Ukraine* – CEACR, observation, 2009 (Law on ensuring equal rights and equal opportunities for women and men).

<sup>1873</sup> *Australia* – CEACR, observation, 2011; *Chile* – CEACR, direct request, 2011; *Ethiopia* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *India* – CEACR, observation, 2010; *Israel* – CEACR, observation, 2009; *Republic of Korea* – CEACR, observation, 2009; *Pakistan* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2011.

<sup>1874</sup> *Norway* – CEACR, direct request, 2011.

<sup>1875</sup> See, for example, *Benin* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2011; and *Papua New Guinea* – CEACR, direct request, 2011.

certain ethnic or social groups, as well as of women, to self-employment (women's entrepreneurship), access to credit, land and other goods and services.<sup>1876</sup>

### *Terms and conditions of employment*

757. The concept of “terms and conditions of employment” referred to in the Convention, is further elaborated in *Paragraph 2(b)(iii)–(vi)* of Recommendation No. 111 covering career advancement; job tenure; remuneration for work of equal value; conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment. For a system of career advancement to be free from discrimination, it must first eliminate vertical occupational segregation, which often affects women, as well as certain minority groups, who are often concentrated at the lower levels of certain enterprises, sectors or occupations. Emphasizing the need for unbroken service for advancement or promotion may have a particular impact on women in employment, particularly if interruptions caused by maternity or family responsibilities are not taken into account when calculating length of service.<sup>1877</sup>

758. With regard to security of tenure, dismissal must not take place on discriminatory grounds.<sup>1878</sup> The Committee has noted in a number of countries the need to strengthen protection against dismissal on the ground of pregnancy or absence for maternity leave.<sup>1879</sup>

759. The 1958 instruments extend the principle of equal remuneration for work of equal value, enshrined in Convention No. 100, to other grounds upon which discrimination is prohibited. Equal remuneration for work of equal value should therefore be a component of the national policy on equality of opportunity and treatment in employment and occupation. Legislation in some countries includes provisions expressly providing for equal remuneration for work of equal value with respect to grounds other than sex,<sup>1880</sup> or with respect to all workers without any distinction.<sup>1881</sup>

760. Under Convention No. 111, any discriminatory treatment regarding benefits or conditions of entitlement to social security, the application of statutory or occupational schemes, whether voluntary or compulsory, contributions and the calculation of benefits, should be eliminated.<sup>1882</sup> The Committee has been able to note in recent years the adoption of measures to bring part-time workers, domestic workers or informal economy workers into social security schemes, with the aim of providing greater coverage for women. For example in *India*, the Unorganized Sector Workers Social Security Act was adopted, with a view to facilitating the formulation of policies and programmes for

<sup>1876</sup> See, for example, *Dominica* – CEACR, direct request, 2010; *Gambia*, direct request, 2011; *India* – CEACR, observation, 2008; *Lesotho* – CEACR, direct request, 2011; *Morocco* – CEACR, observation, 2009; and *Nicaragua* – CEACR, direct request, 2008.

<sup>1877</sup> See, for example, *Jordan* – CEACR, observation, 2011.

<sup>1878</sup> This principle is also enshrined in the Termination of Employment Convention, 1982 (No. 158), *Art. 5(d)*.

<sup>1879</sup> See para. 784 below.

<sup>1880</sup> See, for example, *Chad*, Labour Code 1996; and *Malawi*, Employment Act 1999 (No. 6 of 2000).

<sup>1881</sup> See *Algeria*, Act No. 90-11 of 1990 concerning Labour Relations; and *Republic of Moldova*, Labour Code, March 2003.

<sup>1882</sup> Special Survey, 1996, para. 113. Most discriminatory law and practice in this respect relates to inequalities between men and women and is addressed below.

women who have been deprived of social security coverage.<sup>1883</sup> Differences in the statutory pensionable age between women and men can be discriminatory, particularly where the amount of the pension is linked to the length of contributory service, as different retirement ages will result in women receiving a lower pension than men. Earlier retirement ages for women exert a negative impact and can also have a detrimental impact on women's career paths and access to higher-level positions.<sup>1884</sup> Other measures that have been found to be incompatible with the principle of equality of opportunity and treatment of men and women include voluntary retirement schemes aimed at the retirement of women only, and preferential treatment for employment given to sons of early retirees.<sup>1885</sup>

## Grounds of discrimination: An evolving area

*761. In 1958, Convention No. 111 was adopted enumerating seven grounds of discrimination, namely race, colour, sex, religion, political opinion, national extraction and social origin. Those grounds remain as relevant today as they were at the time. It was also foreseen when the Convention was adopted that new manifestations of discrimination would arise or be recognized, which has indeed been the case. The Convention covers those distinctions, exclusions or preferences in employment and occupation that are based on the grounds expressly referred to in Article 1(1)(a) and on any additional grounds determined in accordance with Article 1(1)(b), which should be the focus of a national policy on equality. Additional grounds of discrimination under Article 1(1)(b) have been determined by a number of member States.*

### *Grounds of discrimination under Article 1(1)(a)*

#### Race, colour and national extraction

762. In the context of the Convention, discrimination on the basis of race and colour is generally examined together as colour is only one, albeit the most apparent, of the ethnic characteristics that differentiate human beings.<sup>1886</sup> Difference of colour, and also national extraction, are often linked to the ground of race in constitutional or legislative provisions adopted to prohibit discrimination. Under the Convention, the term "race" includes any discrimination against linguistic communities or minority groups whose identity is based on religious or cultural characteristics, or national or ethnic origin.<sup>1887</sup> In some countries, national laws with the specific objective of combating racial discrimination define "race" to include race, colour, descent, nationality, ethnic or national origin.<sup>1888</sup> However, the grounds of colour and race should not be considered to

<sup>1883</sup> *India* – CEACR, observation, 2010. See also *Algeria* – CEACR, observation, 2002 (part-time workers and home workers); *Argentina* – CEACR, observation, 2008 (domestic workers); and *Honduras* – CEACR, direct request, 2010 (female domestic workers). See also General Survey, 2011, paras 219–221.

<sup>1884</sup> See *Chile* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2002; and *Viet Nam* – CEACR, direct request, 2005.

<sup>1885</sup> See, for example, *India* – CEACR, observation, 2007.

<sup>1886</sup> One of the most blatant examples of racial discrimination in recent history was the apartheid regime instituted in *South Africa*, which has since been eradicated. See General Survey, 1988, paras 7 and 239, and Special Survey, 1996, para. 162.

<sup>1887</sup> See, for example, *Georgia* – CEACR, direct requests 2009 and 2012; and *Latvia* – CEACR, observation, 2011 (regarding legislation indirectly discriminating against the Russian language minority group in the country); *Morocco* – CEACR, observations, 2009 and 2012 (Berber (Amazigh)).

<sup>1888</sup> See, for example, *United Kingdom*, the Equality Act of 2010, section 9. See also Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) "the term 'racial

be identical, as colour differences may exist between people of the same “race”.<sup>1889</sup> Progress has been noted in *Bulgaria* and *Burkina Faso* due to the explicit inclusion of the previously omitted ground of colour in the labour legislation.<sup>1890</sup> The Committee has considered any discrimination against an ethnic group, including indigenous and tribal peoples, to be racial discrimination within the terms of the Convention.<sup>1891</sup>

763. Ensuring equal opportunities and treatment of ethnic minorities in employment and occupation is of fundamental importance. Ethnic origin or ethnicity, in addition to the grounds of race and colour, is increasingly being referred to in national constitutions, for example, in *Afghanistan*, *Burundi* and *Ecuador*; in labour laws, for example, in *China*, *Fiji* and *Italy*; in specific anti-discrimination or equality legislation, for example, in *Indonesia*, *Norway*, *Trinidad and Tobago*; or in penal laws, for example, in *Guatemala*.

764. When reviewing the application of the principles of the Convention in various countries, the Committee has in many cases examined the grounds of race, colour and national extraction together<sup>1892</sup> as distinctions between these grounds have become increasingly blurred, often due to multiple discrimination. The concept of national extraction covers distinctions made on the basis of a person’s place of birth, ancestry or foreign origin.<sup>1893</sup> Discrimination based on national extraction may be directed against persons who are nationals of the country in question, but who have acquired their citizenship by naturalization or who are descendants of foreign immigrants, or persons belonging to groups of different national extraction living in the same State.<sup>1894</sup> Distinctions made between citizens of the same country on the basis of foreign birth or origin is one of the most evident examples. Discrimination based on national extraction also occurs when legislation imposing a State language for employment in public and private sector activities is interpreted and implemented too broadly, and as such disproportionately and adversely affects the employment and occupational opportunities of minority language groups.<sup>1895</sup> In some countries, national policy gives explicit preference to the employment of nationals. Such policies would be contrary to the principle of the Convention if leading in practice to discrimination based on national

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discrimination’ includes any distinction, exclusion, restriction or preference based on *race, colour, descent, or national or ethnic origin ...*”. The same definition is used in *Brazil*, Racial Equality Statute, Law No. 12.288 of 2010, section 1.

<sup>1889</sup> See *Kazakhstan* – CEACR, observation, 2010; *Mexico* – CEACR, observation, 2006; and *Viet Nam* – CEACR, direct request, 2005.

<sup>1890</sup> See *Bulgaria* – CEACR, observation, 2003; *Burkina Faso* – CEACR, observation, 2006.

<sup>1891</sup> See, for example, *Australia* – CEACR, observation, 2008, and observation and direct request, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burundi* – CEACR, observation, 2009; *Cambodia* – CEACR, direct request, 2011; *Colombia* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Philippines* – CEACR, direct request, 2011; *Sweden* – CEACR, direct request, 2011.

<sup>1892</sup> See, for example, *Bulgaria* – CEACR, direct request, 2010; *China (Macau Special Administrative Region)* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, observation, 2011; *France* – CEACR, observation, 2011; *Indonesia* – CEACR, observation, 2011; *Israel* – CEACR, observation, 2011; *Latvia* – CEACR, observation, 2011; *Morocco* – CEACR, observation, 2009.

<sup>1893</sup> *Record of Proceedings*, ILC, 42nd Session, Geneva, 1958, Appendix VI, p. 710, para. 11.

<sup>1894</sup> General Survey, 1988, para. 36; and Special Survey 1996, paras 33–34; see *Eritrea* – CEACR, direct request, 2011; *Bolivarian Republic of Venezuela* – CEACR, direct request, 2000. See also *Kuwait* – CEACR, observation, 2010, and direct requests, 2008–09 regarding the difficulties faced by stateless persons in employment and occupation on the basis of national extraction.

<sup>1895</sup> See *Latvia* – CEACR, observations, 2010 and 2011.

extraction, for example non-employment or dismissal of nationals of foreign origin or born abroad, who are treated or perceived as non-nationals.<sup>1896</sup>

**765. *The Committee considers that where labour market inequalities along ethnic lines exist, a national policy to promote equality of opportunity and treatment, as envisaged in Articles 2 and 3 of the Convention, should include measures to promote equality of opportunity and treatment of members of all ethnic groups with respect to access to vocational training and guidance, placement services, employment and particular occupations, and terms and conditions of employment.*** In order to achieve the objective of the Convention, it is necessary to address gaps in training and skills levels, as well as to examine and eliminate other difficulties and barriers that certain groups face in accessing and retaining employment in the various sectors and occupations.<sup>1897</sup>

### *People of African descent*

766. The exclusion and poverty of people of African descent due to racism and racial discrimination was recalled at the Durban review meeting in 2009.<sup>1898</sup> In spite of progress, the challenges faced by people of African descent remain significant under the Convention and the Committee has observed continuing or increasing high unemployment rates, as well as low representation in top management positions and over-representation in low-skilled and informal jobs. The Committee welcomes initiatives such as the adoption of legislation, national plans and measures specifically addressing discrimination against people of African descent. In *Brazil*, for example, the Racial Equality Statute implementing effective equality for Afro descendants provides for affirmative action, vocational training and employment policies for the public and private sector, and the design of policies for their integration. In *Ecuador*, the National Development Plan (2007–10) contained a component aimed at combating historical disparities which hinder the human development of Afro-Ecuadorian persons.<sup>1899</sup> The Committee considers that addressing structural racial inequalities against people of African descent requires a combination of legislative efforts, affirmative action, awareness-raising campaigns and targeted measures aimed at their full participation in social and economic life.

### *Indigenous and tribal peoples*

767. Historical processes have had a profound impact on the occupations and employment situation of indigenous and tribal peoples, leading to a diversity of situations which need to be taken into account when applying the principles of the

<sup>1896</sup> See, for example, *Congo and Gabon* – CEACR, direct requests of 2011, where the Committee requested the Government to provide information indicating that, or to take measures to ensure that, the “Gabonization policy” or the policy of “Congolization” or “Africanization” of jobs would not lead to discrimination based on national extraction (e.g. non-hiring of nationals of foreign origin who are believed to be non-nationals).

<sup>1897</sup> See, for example, *New Zealand* – CEACR, observation, 2006.

<sup>1898</sup> Outcome document of the Durban Review Conference, Geneva, 20–24 April 2009. The United Nations General Assembly proclaimed 2011 as the International Year for People of African Descent recognizing them as a distinct group whose human rights must be promoted and protected.

<sup>1899</sup> *Brazil*, Law No. 12.288 of 2010; and *Ecuador* – CEACR, observation, 2012. See also *Colombia* – CEACR, observation, 2012: 2010–14 Development Plan for the Black; Afro-Colombian Palenquera and Raizal Peoples entitled “Towards a multi-ethnic and pluri-cultural Colombia”; *Uruguay* – CEACR, direct request, 2012 regarding measures taken in the context of the programme to strengthen institutional mechanisms in favour of Afro-Uruguayan women.

Convention.<sup>1900</sup> The Committee has examined the situation of indigenous and tribal peoples in the context of the Convention in an increasing number of countries.<sup>1901</sup> Whether they are pastoralists, hunter-gatherers, forest dwellers, workers in the informal economy or formally employed, including in the public service,<sup>1902</sup> indigenous peoples continue to face high levels of discrimination due to persistent prejudices and negative stereotypes, affecting their situation in employment and occupation. Their traditional occupations are often disregarded as outdated or unproductive. Indigenous peoples continue to be over-represented among the poor, the illiterate and the unemployed.<sup>1903</sup>

768. One of the main issues faced by indigenous peoples relates to the lack of recognition of their rights to land, territories and resources, undermining their right to engage in traditional occupations.<sup>1904</sup> Measures should be taken to ensure equality of opportunity and treatment of indigenous peoples in employment and occupation, including their right to engage without discrimination in their traditional occupations and livelihoods. Recognition of the ownership and possession of the lands they traditionally occupy<sup>1905</sup> and access to their communal lands and natural resources for traditional activities is essential.<sup>1906</sup> Access to credit, marketing facilities, agricultural extension and skills training facilities should also be provided on an equal footing with other parts of the population.<sup>1907</sup>

769. Many indigenous women face additional discrimination based on gender in the labour market and within their communities, including limited access to land and material goods.<sup>1908</sup> In this regard, the Committee welcomes strategies aimed at

<sup>1900</sup> Historically, due to societal and institutional racism, especially during colonial times, but also after independence, many indigenous peoples have been exploited or included in labour markets in the most disadvantaged way, for example as bonded labourers. The situation of forced labour of indigenous peoples was a major consideration in the discussions leading to adoption of Convention No. 29. Even today, in some regions indigenous peoples are the most affected by bonded labour: General Survey, 2007, paras 7 and 137 (including footnote 149). See also Part III on forced labour, para. 294.

<sup>1901</sup> Argentina, Australia, Bangladesh, Plurinational State of Bolivia, Botswana, Brazil, Burundi, Cambodia, Cameroon, Canada, Chile, Colombia, Democratic Republic of the Congo, Costa Rica, Ecuador, El Salvador, Ethiopia, Fiji, Finland, Guatemala, Guyana, Honduras, Indonesia, Kenya, Mexico, Mongolia, Morocco, Namibia, Nepal, New Zealand, Nicaragua, Panama, Paraguay, Peru, Philippines, South Africa, Sweden, Uganda, and Ukraine.

<sup>1902</sup> See, for example, *New Zealand* – CEACR, direct request, 2010 (regarding the vertical occupational segregation and ethnic pay gap of Maori in the public service); and *Ukraine* – CEACR, observation, 2011: (regarding the access of Crimean Tartars in the public service).

<sup>1903</sup> United Nations Permanent Forum on Indigenous Issues: *State of the World's Indigenous Peoples* (New York, 2009).

<sup>1904</sup> See, for example, *Australia* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Nicaragua* – CEACR, direct request, 2010.

<sup>1905</sup> In *Plurinational State of Bolivia*, the “Plan Guarani” seeks to restore the fundamental rights of the Guarani people, including the restitution in part of their lands of origin: *Plurinational State of Bolivia* – CEACR, observation, 2010; see also *Finland* – CEACR, direct request, 2009; and *Kenya* – CEACR, direct request, 2010.

<sup>1906</sup> See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011; *Cambodia* – CEACR, direct request, 2011; *Finland* – CEACR, direct request, 2009; and *Uganda* – CEACR, direct request, 2010.

<sup>1907</sup> General Survey, 1988, para. 35.

<sup>1908</sup> They also have less access to education and training at all levels and higher levels of unemployment. When seeking employment away from their communities, their vulnerability to sexual abuse and harassment, as well as trafficking increases. See *Guatemala* – CEACR, direct request, 2009; and *Panama* – CEACR, direct request, 2010; and *Paraguay* – CEACR, direct request, 2010.



improving the participation of indigenous women in all processes to regularize and issue titles in respect of community ancestral lands.<sup>1909</sup>

770. Indigenous peoples should enjoy equality of opportunity and treatment in accessing vocational training programmes applying to all parts of the population, taking into account their particular needs.<sup>1910</sup> The Committee welcomes the measures taken, for example, in the *Plurinational State of Bolivia*, to give priority to education for rural and indigenous peoples, including the creation of three inter-cultural community indigenous universities, one for the Aymar people, another for the Quechua, and the other for the Guaraní.<sup>1911</sup> Public awareness raising and educational programmes addressing stereotypes and prejudices against indigenous peoples, as well as legal literacy campaigns regarding their rights in the national context, are also essential to promoting understanding and co-existence between different population groups.

771. Recent progress has been made in countries across all regions regarding new legislation both to protect indigenous communities and to promote their equality of opportunity.<sup>1912</sup> Most recently, *Congo* adopted a comprehensive Act on the Promotion and Protection of the Rights of Indigenous Peoples, prohibiting all forms of discrimination against indigenous peoples based on their social origin or their indigenous identity.<sup>1913</sup> Legislation also needs to be effectively implemented, and in some countries, serious problems remain, particularly with regard to indigenous forms of land use and ownership.<sup>1914</sup>

772. The Committee strongly encourages countries to assess the situation in employment and occupation of all ethnic groups in their country, in particular indigenous and tribal peoples, and the discrimination faced by them, and to supply such information in their reports under article 22 of the Constitution. The Committee recalls that the Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides important elements for overcoming discrimination against indigenous and tribal peoples and ensuring their equality of opportunity and treatment. The Committee considers that ratification of this Convention constitutes progress in achieving the objective of Convention No. 111.<sup>1915</sup>

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<sup>1909</sup> *Plurinational State of Bolivia* – CEACR, observation, 2010.

<sup>1910</sup> Indigenous and Tribal Peoples Convention, 1989 (No. 169), Art. 22.

<sup>1911</sup> *Plurinational State of Bolivia* – CEACR, observation, 2010.

<sup>1912</sup> For example, *Philippines* – CEACR, direct request, 2000 (Indigenous Peoples' Rights Act No. 8371 of 1997); *Nicaragua* – CEACR, observation, 2006 (Decree No. 3584 issuing regulations respecting the autonomous status of the Atlantic coast regions of *Nicaragua*, issued under the Act respecting the common property regime of indigenous peoples and ethnic communities in the autonomous regions of the Atlantic coast).

<sup>1913</sup> Act No. 5-2011 of 25 February of 2011 on the Promotion and Protection of the Rights of Indigenous Peoples. The Act also contains provisions regarding cultural rights, the right to education and to work without any discrimination, and guarantees collective and individual rights to property, possession, access and utilization of lands and natural resources they occupy or use for their subsistence, health care and work.

<sup>1914</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; and *El Salvador* – CEACR, observations, 2010 and 2011.

<sup>1915</sup> See *Central African Republic* – CEACR, direct request, 2012; *Chile* – CEACR, observation, 2009; and *Nicaragua* – CEACR, direct request, 2012.

*Roma people*

773. Addressing discrimination against the Roma people and promoting their equal opportunities in employment and occupation is a recurrent concern in almost all European countries. The Roma face discriminatory recruitment practices and high unemployment levels, low educational attainment and limited access to quality education, and are concentrated in low-skilled labour irrespective of their educational levels.<sup>1916</sup> The discrimination faced by the Roma is symptomatic of discrimination faced by other groups in different regions. Such discrimination is often exacerbated by negative attitudes due to deeply rooted stereotypes and prejudices about capabilities and preferences.<sup>1917</sup> Segregation of Roma children in education resulting in low educational levels, thus limiting the access of Roma to employment,<sup>1918</sup> is particularly problematic, although developments have been noted in this regard. With a view to addressing the problem of Roma segregation in education, some countries have included the ground of “segregation” in their anti-discrimination laws.<sup>1919</sup> In this regard, the Committee draws attention to the need for concrete and effective measures to ensure and promote equal opportunities with respect to access to education, including pre-school education for Roma children, without discrimination.<sup>1920</sup>

774. Regional initiatives funded by the European Union, and the Decade of Roma Inclusion (2005–15) by the Council of Europe, have given a new impetus to the recognition of the need for targeted measures aimed at Roma inclusion and combating discrimination against them, including in employment and education.<sup>1921</sup> The Committee was able to note progress in the adoption of national action plans and strategies targeting Roma communities in most countries in Europe, for example in *Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Finland, Hungary, Latvia, Lithuania, Montenegro, Portugal and Romania*.<sup>1922</sup> Measures range from improving access to vocational training and education, including for Roma children, awareness raising, affirmative action and targeted employment programmes, as well as adopting specific legislative measures. In *Slovenia*, for example, the Roma Community Act defines the rights of the Roma community and provides that the State shall create the

<sup>1916</sup> See, for example, *Croatia* – CEACR, observation, 2011; *Czech Republic* – CEACR, observations, 2003, 2008, 2009 and 2012; and *Poland* – CEACR, direct request, 2011.

<sup>1917</sup> See *Czech Republic* – CEACR, observation, 2004; *France* – CEACR, direct request, 2010; *Finland* – CEACR, direct request, 2011; and *Italy* – CEACR, direct request, 2011.

<sup>1918</sup> See, for example, *Serbia* – CEACR, direct request, 2012; and *Slovenia* – CEACR, direct request, 2012. See also *D.H. v. Czech Republic* (App. No. 57325/00, 2007-XII Eur.Ct. H.R): the European Court of Human Rights found that children were segregated on the basis of race in a nationwide education system.

<sup>1919</sup> *Bulgaria*, Protection of Discrimination Act; *Hungary*, Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities.

<sup>1920</sup> See *Croatia* – CEACR, observation, 2010.

<sup>1921</sup> On 19 May 2011, the Council of the European Union also adopted conclusions on an “EU Framework for National Roma Integration Strategies up to 2020”, inviting member States to identify the factors characterizing the territorial concentration of marginalized and disadvantaged groups including the Roma; to advance the social and economic inclusion of Roma by guaranteeing their legal rights; and to foster positive changes in attitudes towards Roma by improving public awareness of Roma culture and identity and combating stereotypes, xenophobia and racism.

<sup>1922</sup> *Albania* – CEACR, direct request, 2012; *Bosnia and Herzegovina* – CEACR, direct request, 2010; *Bulgaria* – CEACR, observation, 2007; *Croatia* – CEACR, observation, 2011; *Finland* – CEACR, direct request, 2011; *Hungary* – CEACR, direct request, 2008; *Latvia* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2010; *Republic of Moldova* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; *Portugal* – CEACR, direct request, 2012; and *Romania* – CEACR, observation, 2006.

conditions for the inclusion of members of the Roma community in the education system and the labour market.<sup>1923</sup> In some countries, measures such as targeted language skills training have been considered to remove barriers hindering Roma access to education, employment and occupation.<sup>1924</sup> While such measures are important, the Committee considers that measures to improve access of the Roma to education at all levels, including education provided in their mother tongue,<sup>1925</sup> also need to be taken. Where Roma choose primarily to be engaged in self-employed activities, they should enjoy equal opportunities to carry out the occupation of their choosing. Progress achieved through the policies and programmes for Roma inclusion and combating discrimination against them should not be affected as a result of the economic downturn and consequent austerity measures.<sup>1926</sup>

775. Proactive measures are also needed to analyse and address the situation of the different groups in the labour market, in cooperation with workers' and employers' organizations, and to improve knowledge and awareness among ethnic and national minorities about anti-discrimination and equality legislation, enforcement mechanisms and procedures.<sup>1927</sup> Policies aimed at combating discrimination against the Roma cannot be effective without measures to address stereotypes and prejudices regarding the capabilities and preferences of the Roma and to promote respect and tolerance between all sections of the population.<sup>1928</sup> Such policies should be implemented without delay. Regular monitoring of the results secured and the progress made is essential. However, the Committee notes that, despite the rise in measures targeting the Roma, information on the impact of such measures is often absent. The Committee therefore welcomes that some countries have taken specific measures, including the creation of specialized structures to monitor and report on the implementation and progress made under national strategies and plans.<sup>1929</sup>

### *Migrant workers*

776. In some countries persons belonging to racial and ethnic minorities mainly consist of foreign workers, immigrants or the descendants of immigrants. While *Article 1(1)(a)* of the Convention does not refer specifically to "nationality", both nationals and non-nationals should be protected from discrimination on the grounds covered by the Convention. Migrant workers are particularly vulnerable to prejudices and differences in treatment in the labour market on grounds such as race, colour and national extraction, often intersecting with other grounds such as gender and religion. The intersection between migration and discrimination should be addressed in the context of the Convention. ***Governments should declare and pursue a national equality policy which***

<sup>1923</sup> See *Slovenia* – CEACR, direct request, 2010.

<sup>1924</sup> See *Lithuania* – CEACR, direct request, 2010; and *Republic of Moldova* – CEACR, direct requests, 2010, 2011.

<sup>1925</sup> See *Romania* – CEACR, observation, 2008.

<sup>1926</sup> See, for example, *Czech Republic* – CEACR, observation, 2012.

<sup>1927</sup> See, for example, *Sweden* – CEACR, direct request, 2010.

<sup>1928</sup> See *France* – CEACR, direct request, 2011; *Poland* – CEACR, direct request, 2011; and *Romania* – CEACR, observation, 2008.

<sup>1929</sup> See *Albania* – CEACR, direct request, 2010; *Bulgaria* – CEACR, observation and direct request, 2012; *Hungary* – CEACR, direct request, 2011; and *Serbia* – CEACR, direct request, 2012.

*covers all workers, including migrant workers, with a view to eliminating discrimination against them on all the grounds listed in the Convention.*<sup>1930</sup>

777. In some countries, constitutional guarantees on equality or non-discrimination are confined to citizens.<sup>1931</sup> In the absence of any other relevant legislative provisions protecting non-nationals from discrimination in employment and occupation, concrete measures must be taken to protect these workers in practice against discrimination on the grounds enumerated in the Convention. In most instances, it is necessary to ensure that non-nationals are covered by non-discrimination and equality provisions in the labour or other relevant legislation. The Committee has underlined the importance of effective legislative protection, and the promotion and enforcement of such legislation, to ensure that migrant workers are not subject to discrimination and abuse.<sup>1932</sup>

778. The particular vulnerability to discrimination of migrant workers in an irregular situation, especially with respect to conditions of work, including wages, and issues relating to occupational safety and health, as well as workplace injuries, is a concern that needs to be addressed.<sup>1933</sup> The Committee recalls that under the Convention all migrant workers, including those in an irregular situation, must be protected from discrimination in employment on the basis of the grounds set out in *Article 1(1)(a)*.<sup>1934</sup>

779. It should also be ensured that migration laws and policies and their implementation do not result in discrimination against migrant workers based on race, colour and national extraction.<sup>1935</sup> The Committee has noted particular difficulties in the application of the Convention with respect to certain laws and regulations governing the employment of foreign workers. These have included certain employment permit systems and sponsorship systems severely restricting the possibility of workers changing workplaces, employers or sponsors. The Committee considers that where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination based on the grounds of the Convention.<sup>1936</sup> It is essential that under systems of employment migrant workers enjoy the protection provided by the Convention, in law and practice. Especially in countries where migrant workers constitute a large proportion, and sometimes the majority of the working population, it is important to keep the specific legislation governing migrant workers, including sponsorship systems, under review. The Committee considers that providing for appropriate flexibility for migrant workers to change their employer or

<sup>1930</sup> See *Saudi Arabia* – CEACR, observation, 2009.

<sup>1931</sup> See *Ethiopia* – CEACR, observation, 2011; *Sri Lanka* – CEACR, observation, 2009; and *Swaziland* – CEACR, direct request, 2010.

<sup>1932</sup> See *Bahrain* – CEACR, observation, 2010; and *Sri Lanka* – CEACR, observation, 2010.

<sup>1933</sup> See also *South Africa* – CEACR, direct request, 2010: The Committee noted the decision of the Labour Court of Johannesburg of March 2008 emphasizing that migrant workers in an irregular situation enjoy the right to fair labour practices laid down in the Constitution and the protections enshrined in the Labour Relations Act. With respect to compensation for workplace injuries, the Committee also refers to the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). In this regard see also *Thailand* – CEACR, observation, 2012, Convention No. 19.

<sup>1934</sup> See *Argentina* – CEACR, observation, 2011; *Belarus* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, observation, 2011; *France (French Guiana)* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; and *Spain* – CEACR, observation, 2002.

<sup>1935</sup> See, for example, *Dominican Republic* – CEACR, observation, 2011.

<sup>1936</sup> See, for example, *Bahrain* – CEACR, observation, 2009; *Republic of Korea* – CEACR, observation, 2009; and *Kuwait* – CEACR, observation, 2011. See also Part III on forced labour, para. 295.

their workplace assists in avoiding situations in which they become particularly vulnerable to discrimination and abuse.<sup>1937</sup> Providing legal protection for migrant workers against discrimination and adequate and effective dispute resolution mechanisms are essential in this context.<sup>1938</sup> Fear of retaliation by the employer, including termination or non-renewal of their contract, should be addressed through effective labour inspection and the access of migrant workers to legal remedies, including accessible and speedy complaints procedures.<sup>1939</sup>

780. Migrant domestic workers, notably women, have been particularly affected by the lack of legal protection against discrimination on the grounds of the Convention and restrictive sponsorship systems.<sup>1940</sup> Some positive steps have been undertaken to address the situation of migrant domestic workers through training and information campaigns, steps to review sponsorship systems, the adoption of special regulations covering their conditions of work, model employment contracts<sup>1941</sup> and the strengthening of complaints mechanisms.<sup>1942</sup>

781. Difficulties in application of the Convention to migrant workers also exist in the context of legal employment restrictions for migrant workers in certain job categories, or when precedence is given to residents in respect of hiring and maintaining employment. The practical application of the legislation should not lead to indirect discrimination against migrant workers on the grounds set out in the Convention with respect to hiring and job security.<sup>1943</sup>

### Sex discrimination and gender equality

782. Under the Convention, sex discrimination includes distinctions based on the biological characteristics, as well as unequal treatment arising from socially constructed roles and responsibilities assigned to a particular sex (gender). Gender roles and responsibilities are affected by age, race, class, ethnicity and religion, and by the geographical, economic and political environment. In recent years, the concept of gender<sup>1944</sup> has been included in the national legislation of a number of countries, including the *Plurinational State of Bolivia, Burundi, Comoros, Fiji, Finland, Latvia, Russian Federation, Rwanda, Serbia, Seychelles and Sweden*,<sup>1945</sup> as a prohibited ground

<sup>1937</sup> See, for example, *Republic of Korea* – CEACR, observation, 2009.

<sup>1938</sup> See, for example, *Kuwait* – CEACR, observation, 2011; *Qatar* – CEACR, observation, 2009, and *Saudi Arabia* – CEACR, observations, 2007 and 2009.

<sup>1939</sup> See, for example, *Republic of Korea* – CEACR, observation, 2009; *Qatar* – CEACR, observation, 2009. See also paras 872–886 below.

<sup>1940</sup> See, for example, *Bahrain* – CEACR, observation, 2009; *Republic of Korea* – CEACR, observation, 2009; *Kuwait* – CEACR, observations, 2009 and 2011; *Qatar* – CEACR, observation, 2008; *Saudi Arabia* – CEACR, observation, 2009; and *United Arab Emirates* – CEACR, direct request, 2009.

<sup>1941</sup> See, for example, *Lebanon* – CEACR, direct request, 2010; and *Jordan* – CEACR, direct request, 2011.

<sup>1942</sup> See also paras 795–797 below (domestic workers).

<sup>1943</sup> See, for example, *Argentina* – CEACR, direct request, 2010; and *China (Macau Special Administrative Region)* – CEACR, direct request, 2011.

<sup>1944</sup> The use of the concept of “gender” as a socio-economic variable to analyse roles, responsibilities, constraints, opportunities and needs of men and women is an essential component to promote equality of opportunity and treatment under the Convention.

<sup>1945</sup> *Plurinational State of Bolivia*, Supreme Decree No. 0213 of 2009; *Burundi*, Act No. 1/28 of 2006 on the general status of public servants; *Comoros*, Public Service Statute (Act No. 04-006/A.U of 2004); *Finland*, the Non-Discrimination Act 2004; *Latvia*, Labour Code 2002; *Russian Federation*, Labour Code 2001; *Rwanda*, Act No. 59/2008 on the prevention and punishment of gender-based violence; *Serbia*, Law on the Prohibition of

of discrimination in employment, but also in the context of a comprehensive legislative strategy to overcome gender discrimination in all aspects of society.<sup>1946</sup>

**783. *The protection against discrimination applies to both men and women, although considerable inequalities, in law and in practice, exist to the detriment of women. Despite the requirement under the Convention to repeal discriminatory legal provisions,*<sup>1947</sup> *laws discriminating directly or indirectly against women have not yet been relegated to the past. Women are also over-represented in informal and atypical jobs, including part-time jobs, face greater barriers in gaining access to posts of responsibility, and continue to bear the unequal burden of family responsibilities. Stereotyped assumptions regarding women's aspirations and capabilities, their suitability for certain jobs or their interest or availability for full-time jobs, continue to lead to the segregation of men and women in education and training, and consequently in the labour market.*<sup>1948</sup>**

### *Pregnancy and maternity*

784. Distinctions in employment and occupation based on pregnancy or maternity are discriminatory, as they can only, by definition, affect women.<sup>1949</sup> With a view to improving protection in this regard, most European countries, as well as for example, *Afghanistan, Australia, China, Fiji, Gambia, Mauritius and South Africa* have included the grounds of pregnancy and maternity (or childbirth) among the prohibited grounds of discrimination in national legislation.<sup>1950</sup> Other countries, particularly in Latin America, have adopted legislation prohibiting explicitly the requirement of pregnancy testing as a condition of employment.<sup>1951</sup> Even with such legislative progress, discriminatory practices linked to pregnancy or maternity continue to exist and have been particularly linked to dismissal and denial of the return to work following maternity leave,<sup>1952</sup> the

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Discrimination 2009; *Seychelles*, Employment (Amendment) Act 2006; and *Sweden*, Prohibition of Discrimination Act 2003.

<sup>1946</sup> For example, *Azerbaijan*, Law on guarantees of gender equality, 2006; *Bosnia and Herzegovina*, Act on Gender Equality, 2003; *Croatia*, Gender Equality Act 2008; *Iceland*, Act on Equal Status and Equal Rights of Women and Men, No. 10/2008; *Montenegro*, Law on Gender Equality 2007; *Philippines*, The Magna Carta of Women (Republic Act No. 9710); *Tajikistan*, Act No. 89 of 2005 on State guarantees for the equality of men and women and equal opportunities for their realization; *Viet Nam*, Law No. 73/2006/QH11 on Gender Equality; and *Zambia*, Citizens Economic Empowerment Act 2006.

<sup>1947</sup> Art. 3(b).

<sup>1948</sup> See *Saudi Arabia* – CEACR, observations, 1997, 2000, 2001, 2004 and 2006. The Committee for many years expressed concern that section 160 of the Labour Code prohibiting co-mingling of men and women in the place of employment ..., might result in de facto occupational segregation on the basis of sex. While section 160 has been repealed, the Labour Code continues to contain a provision stating that “women shall work in all fields suitable to their nature” and prohibiting employing women in hazardous jobs or industries.

<sup>1949</sup> In so far as they do not constitute protective measures in the sense of Art. 5 of the Convention: see paras 836–840.

<sup>1950</sup> *Afghanistan*, Labour Code, 2007; *Australia*, The Fair Work Act, 2009; *China*, Employment Promotion Law, 2007, and Labour Contract Law, 2008; *Fiji*, Employment Relations Promulgation, 2007; *Gambia*, Labour Act, 2007; *Mauritius*, Employment Rights Act, 2008; and *South Africa*, Employment Equity Act, 1998.

<sup>1951</sup> See, for example, *Chile*, Act No. 19591 of 1998; and *Honduras*, Equal opportunities for Women Act, 2000.

<sup>1952</sup> See, for example, *Angola* – CEACR, observation, 2010; *Belgium* – CEACR, direct requests, 2009 and 2011; *Ecuador* – CEACR, observation, 2010; and *Israel* – CEACR, direct request, 2011. In *Belgium*, the Committee expressed concern at the increase in litigation on discrimination linked to the grounds of pregnancy, confinement and maternity, often due to the lack of information regarding legislation among pregnant women, and workers and employers generally.

use of temporary contracts to discriminate against pregnant women<sup>1953</sup> and mandatory pregnancy testing.<sup>1954</sup> With a view to effectively combating discrimination based on pregnancy and maternity, the Committee has asked the governments concerned to take specific measures in cooperation with the social partners.<sup>1955</sup> The Maternity Protection Convention, 2000 (No. 183), recognizes that maternity protection is a precondition for gender equality and for non-discrimination in employment and occupation. The Committee considers that ratification of Convention No. 183 constitutes important progress in achieving the broader objective of gender equality in employment and occupation, as enshrined in Convention No. 111.<sup>1956</sup>

### *Workers with family responsibilities*

785. Legislative or other measures assisting workers with family responsibilities are essential to promote gender equality in employment and occupation, and measures adopted in this regard are a “natural extension of the well-accepted principles on equality”.<sup>1957</sup> With a view to promoting gender equality, several countries have included family responsibilities as a prohibited ground of discrimination in their national legislation.<sup>1958</sup> Other countries have adopted legislative provisions to assist workers with family responsibilities,<sup>1959</sup> ranging from specific improvements relating to entitlements to maternity, paternity and parental leave,<sup>1960</sup> working-time arrangements, the duty of the employer to facilitate employees to combine work and family responsibilities more easily,<sup>1961</sup> or improved protection of part-time workers,<sup>1962</sup> many of whom are women. In *Latvia*, amendments to the Labour Law provide that “any less favourable treatment due to the granting of prenatal or maternity leave, or leave to the father of the child” is deemed to be direct discrimination.<sup>1963</sup> In *Pakistan*, the National Gender Reform Action Plan provides for measures to increase women’s employment in the public sector, including through improvements of office facilities to provide for restrooms and

<sup>1953</sup> See *Panama* – CEACR, observation, 2010.

<sup>1954</sup> See, for example, *Dominican Republic* – CEACR, observation, 2011; and *Guatemala* – CEACR, observation, 2010.

<sup>1955</sup> See *Denmark* – CEACR, direct request, 2011; and *Guatemala* – CEACR, observation, 2011.

<sup>1956</sup> See, for example, *Azerbaijan* – CEACR, observation, 2011.

<sup>1957</sup> *Workers with family responsibilities*, General Survey of the reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation No. 165, 1981, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 80th Session, 1993, para. 266.

<sup>1958</sup> See *Australia*, the Fair Work Act, 2009; *Fiji*, Employment Relations Promulgation, 2007; *Malta*, Equality for Men and Women Act, 2003; *Namibia*, Labour Act, 2007; *Romania*, Labour Code, 2003; and *Rwanda*, Act No. 13/2009 regulating labour.

<sup>1959</sup> See *Czech Republic*, Act No. 115/2000 amending the Labour Code; *Finland*, Employment Contracts Act, 2001; and *Iceland*, Prohibition on termination of employment due to family responsibilities Act No. 27/2000.

<sup>1960</sup> See *Afghanistan*, Labour Code, 2007; *Armenia*, Labour Code, 2004; *Australia*, Paid Parental Leave Act, 2010; *Germany*, Care Time Act, 2008, and Child Support Act, 2008; *Iceland*, Act No. 95/2000 on maternity/paternity leave and parental leave; and *Tajikistan*, Act No. 89 of 2005 on state guarantees for the equality of men and women and equal opportunities for their realization.

<sup>1961</sup> See *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2010 (section 161(2) of the Labour Relations Act 2005).

<sup>1962</sup> See *Republic of Korea* – CEACR, observations, 2008 and 2009 regarding the Act on the Protection etc. ... of fixed-term and part-time employees (Act No. 8074 of 2006) prohibiting discrimination on the basis of contract status.

<sup>1963</sup> *Latvia* – CEACR, direct request, 2011 (Labour Act of 2001, amended in March 2010).

day-care facilities.<sup>1964</sup> A number of collective agreements also provide for maternity and paternity leave, or address work and family issues.

786. However, when legislation, collective agreements or other measures reflect the assumption that the main responsibility for family care lies with women or excludes men from certain rights and benefits,<sup>1965</sup> it reinforces and prolongs stereotypes regarding the roles of women and men in the family and in society. The Committee considers that, in order to achieve the objective of the Convention, measures to assist workers with family responsibilities should be available to men and women on an equal footing.<sup>1966</sup> The Workers with Family Responsibilities Convention, 1981 (No. 156), provides important guidance on measures to overcome discrimination based on family responsibilities and to assist workers with family responsibilities with a view to promoting equality of opportunity and treatment between men and women, and between workers with family responsibilities and other workers.

### *Laws on personal and family relations*

787. Laws governing personal and family relations which do not yet provide for equal rights of men and women also continue to have an impact on the enjoyment of equality with respect to work and employment, notably laws authorizing a husband to object to his wife working outside the home, or requiring the husband's permission before his wife can accept certain jobs. Distinctions based on civil status, marital status, or more specifically family situation (particularly as regards responsibilities for dependent persons), are contrary to the Convention when they have the effect of imposing a requirement or condition on an individual of a particular sex that would not be imposed on an individual of the other sex.<sup>1967</sup> The protection provided by the Convention against discrimination applies equally to either sex, and the adoption of national legislation which ensures equal rights and responsibilities for men and women is an important step in the pursuit of equality in society. For instance, the adoption in *Morocco* of legislation ensuring equal rights and responsibilities for men and women within the family and abolishing a number of restrictions in the old Moudawa (Personal Status Code), has been considered by the Committee as a legislative instrument creating a new environment to pursue rapid progress towards equality of opportunity and treatment for men and women in employment and occupation.<sup>1968</sup> Substantial progress was also made in *Lesotho* with the adoption of the Legal Capacity of Married Persons Act of 2006 repealing "common

<sup>1964</sup> *Pakistan* – CEACR, observation, 2011.

<sup>1965</sup> See *Austria* – CEACR, direct request, 2006; *Bahrain* – CEACR, direct request, 2008; *Belarus* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2006; *Tunisia* – CEACR, direct request, 2010; and *Turkmenistan* – CEACR, direct request, 2011.

<sup>1966</sup> See *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009; *Turkmenistan* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2010. See also *Romania* – CEACR, direct request, 2011. The Committee noted that collective agreements for the mining industry (section 7(12)) and the automobile construction (section 126) provide that women caring for children under the age of six have the right to work half time, if they do not have access to a crèche or kindergarten, and that such periods are considered full-time work for the purpose of calculating seniority. A number of collective agreements contain provisions granting women the right to shorter working hours to care for children and the right to additional leave days to care for an ill child. These rights are available to men only when the child's mother is deceased.

<sup>1967</sup> The Committee has noted the incompatibility with the Convention of laws giving the possibility for husbands to prevent their wives from engaging in certain occupations in *Cameroon* – CEACR, observation, 2010; *Chad* – CEACR, observation, 2009; *Democratic Republic of the Congo* – CEACR, observation, 2009; *Djibouti* – CEACR, direct request, 2009; and *Gabon* – CEACR, direct request, 2010.

<sup>1968</sup> *Morocco* – CEACR, observation, 2005 (Family Code, 2004).



law, customary law and any other marriage rules in terms of which a husband acquires marital powers over the person and property of his wife”.<sup>1969</sup>

### *Exclusions from particular jobs*

788. The Committee has, on certain occasions, raised concerns regarding discriminatory laws and practices limiting the recruitment of women, including in the judiciary<sup>1970</sup> and the police force,<sup>1971</sup> and the conditions of service applying to them. The Committee has also considered that legal provisions establishing common height and athletic requirements for admission to the police academy are likely to constitute indirect discrimination against women.<sup>1972</sup> Sex discrimination in job advertisements,<sup>1973</sup> age restrictions for hiring women<sup>1974</sup> and the lack of legislative prohibition of discrimination against women in hiring remain concerns.<sup>1975</sup> ***Women should have the right to pursue freely any job or profession and the Committee points out that exclusions or preferences in respect of a particular job in the context of Article 1(2) of the Convention, should be determined objectively without reliance on stereotypes and negative prejudices about men’s and women’s roles.***<sup>1976</sup>

### *Sexual harassment*

789. ***Sexual harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers. It damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity.***<sup>1977</sup> ***Over the years, the Committee has consistently expressed the view that sexual harassment, as a serious manifestation of sex discrimination and a violation of human rights, is to be addressed within the context of the Convention. Given the gravity and serious repercussions of sexual harassment, the Committee recalls its general observation highlighting the importance of taking effective measures to prevent and prohibit sexual harassment at work.***<sup>1978</sup> ***Such measures should address both quid pro quo and hostile environment sexual harassment, and the Committee’s general observation provides further guidance in this regard.***<sup>1979</sup>

<sup>1969</sup> Lesotho – CEACR, observation, 2010.

<sup>1970</sup> See *Egypt* – CEACR, direct request, 2011; *Kuwait* – CEACR, observation, 2011; and *Islamic Republic of Iran* – CEACR, observation, 2011.

<sup>1971</sup> See *Nigeria* – CEACR, observation, 2011.

<sup>1972</sup> See *Greece* – CEACR, observation, 2009 (Presidential Decree No. 90 of 7 April 2003).

<sup>1973</sup> See *Cambodia* – CEACR, direct request, 2011; and *Mongolia* – CEACR, direct request, 2011. See also *Qatar* – CEACR, observation, 2009. The Committee recalled that stereotyped assumptions regarding women’s capabilities and “suitability” for certain jobs contribute to discrimination in hiring.

<sup>1974</sup> See *Islamic Republic of Iran* – CEACR, observation, 2011; and *Nigeria* – CEACR, observation, 2011.

<sup>1975</sup> See *Philippines* – CEACR, observation, 2008.

<sup>1976</sup> See, for example, *Comoros* – CEACR, direct request, 2008; *Côte d’Ivoire* – CEACR, observation, 2011; *Greece* – CEACR, observation, 2001; *Ireland* – CEACR, observation, 2009; *Islamic Republic of Iran* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009. See also paras 838–840 below.

<sup>1977</sup> CEACR, general observation, Convention No. 111, 2003, p. 463.

<sup>1978</sup> *ibid.*, pp. 463–464.

<sup>1979</sup> *ibid.*, p. 463: Definitions of sexual harassment contain the following elements: (1) (quid pro quo): any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men which is unwelcome, unreasonable and offensive to the recipient; and a person’s rejection of, or

790. Progress has been made in a number of countries through legislative measures regarding sexual harassment in employment and occupation. For example, *Dominican Republic, Honduras, Mexico, Namibia* and Timor-Leste<sup>1980</sup> have adopted provisions in the labour codes, whereas others, such as *Costa Rica, Israel, Peru, Philippines, Rwanda, South Africa* and *Uruguay*, have adopted specific legislation on sexual harassment.<sup>1981</sup> Nonetheless, some governments maintain that sexual harassment is unknown to the culture, traditions or practice of the country, illustrated by the fact that no complaints have been filed.<sup>1982</sup> The Committee recalls that the absence of complaints regarding sexual harassment does not necessarily indicate that this form of sex discrimination does not exist; rather, it is likely to reflect the lack of an appropriate legal framework, the lack of awareness, understanding and recognition of this form of sex discrimination among government officials, and workers and employers and their organizations, as well as the lack of access to or the inadequacy of complaints mechanisms and means of redress, or fear of reprisals.

791. Specific legislative gaps remain relating to effective prevention of, and protection against, sexual harassment. While several laws provide for both quid pro quo and hostile work environment as constitutive elements of sexual harassment, such as in *Austria*<sup>1983</sup> and Timor-Leste, some laws on sexual harassment lack clear definitions,<sup>1984</sup> or do not take into account one of these two elements of sexual harassment.<sup>1985</sup> In this respect, the Committee considers that without a clear definition and prohibition of both quid pro quo and hostile work environment sexual harassment, it remains doubtful whether the legislation effectively addresses all forms of sexual harassment.<sup>1986</sup>

792. The Committee considers that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or “immoral acts”, and not the full range of behaviour that constitutes sexual harassment in employment and occupation.<sup>1987</sup> The Committee also considers that legislation under which the sole redress available to victims of sexual harassment is termination of the employment relationship, while retaining the right to compensation, does not afford

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submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job; or (2) (hostile work environment): conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

<sup>1980</sup> Report of Timor-Leste under art. 19 of the Constitution referring to the Labour Code 2002.

<sup>1981</sup> *Costa Rica*, Act No. 8805, amending Act No. 7476 concerning sexual harassment in employment and teaching (28 April 2010); *Israel*, Act on the Prevention of Sexual harassment 1998; *Peru*, Act No. 27942 of 2003 on the prevention and punishment of sexual harassment; *Philippines*, Anti-Sexual Harassment Act (Republic Act No. 7877) of 1995; *Rwanda*, Act No. 59/2008 on the prevention and punishment of gender based violence; *South Africa*, Employment Equity Act 1998 and Code of Good Practice on the Handling of Cases of Sexual Harassment; and *Uruguay*, Act No. 18561 concerning sexual harassment at work and in teaching relationships (18 August 2009).

<sup>1982</sup> See, for example, *Mauritania* – CEACR, direct request, 2009; *Saudi Arabia* – CEACR, observation, 2010; and *Sudan* – CEACR, direct request, 2011.

<sup>1983</sup> Federal Equality of Treatment Act. See also *Bulgaria*, Act of 2003 on Protection against Discrimination.

<sup>1984</sup> See *China* – CEACR, direct request, 2010; *Iraq* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; and *Viet Nam* – CEACR, observation, 2010.

<sup>1985</sup> For example, *Serbia* does not refer to quid pro quo in its legislation, whereas, *Benin, Burkina Faso, Niger, Paraguay* and *Ukraine* do not refer to hostile work environment.

<sup>1986</sup> See *Jordan* – CEACR, direct request, 2011; and *France* – CEACR, direct request, 2011.

<sup>1987</sup> See *Kuwait* – CEACR, observation, 2010; and *Qatar* – CEACR, direct request, 2012.

sufficient protection for victims of sexual harassment, since it in fact punishes them and could dissuade victims from seeking redress.<sup>1988</sup>

793. The scope of the protection against sexual harassment should cover all employees, male and female, with respect not only to employment and occupation, but also vocational education and training, access to employment and conditions of employment.<sup>1989</sup> The Human Rights Act and the Employment Relations Act of *New Zealand* provide for a broad scope of employer liability, which includes the actions of clients, customers and co-workers, and protect all employees from sexual harassment, including home workers and persons intending to work.<sup>1990</sup> Other legislation, for example in the *Netherlands*, *Romania* and *Uganda*, imposes an obligation on employers to take measures to prevent sexual harassment at the workplace.<sup>1991</sup> Sexual harassment has also been addressed at the regional level, particularly in the European Union and in the Caribbean.<sup>1992</sup> In the absence of legislation, the courts have been instrumental in adopting guidelines on sexual harassment which have the force of law until adequate and effective legislation is in place.<sup>1993</sup> The guidelines set by the High Court in *Bangladesh*, for example, provided a detailed definition of quid pro quo and hostile environment, sexual harassment, guidance for employers and educational institutions to prevent sexual harassment, as well as guidance on a complaints mechanism and criminal proceedings.

794. The range of practical measures adopted by governments to address sexual harassment varies from help lines, legal assistance or support units to assist victims of sexual harassment,<sup>1994</sup> structures mandated to institute labour-related administrative proceedings regarding cases of sexual harassment,<sup>1995</sup> or training for the social partners and labour inspectors.<sup>1996</sup> Other countries, such as *Indonesia*, *Italy*, *Lesotho* and *Sri Lanka*, have elaborated codes of conduct or guidelines applicable both in the private and

<sup>1988</sup> See *Gambia* – CEACR, direct request, 2012; *Honduras* – CEACR, direct request, 2012; and *Mexico* – CEACR, observation, 2009.

<sup>1989</sup> *El Salvador*, Decree 520 provides for protection only for women; *Uganda*, the Employment Act, section 7 does not cover harassment by co-workers (direct request, 2011); *Chile*, Act No. 20005 of 8 March 2005, which defines and prescribes penalties for sexual harassment. In its direct request of 2007, the Committee considered that the Act was narrower in terms of the persons to be protected and those to be considered liable, as well as in terms of the areas of application and procedures for protecting victims.

<sup>1990</sup> *New Zealand* – CEACR, direct request, 2006; Employment Relations Act, 2000; Human Rights Act, 1993, No. 82; see also *Luxembourg* – CEACR, direct request, 2002.

<sup>1991</sup> *Netherlands* – CEACR, direct request, 2008: the Working Conditions Act obliges employers to implement a policy of protection against sexual harassment, violence and aggression; and *Romania*: Act No. 202/2002 includes the obligation to communicate the sexual harassment policy within enterprises and provides for disciplinary sanctions in case of infringements.

<sup>1992</sup> Article 2(1)(d) and Article 26 of Directive 2006/54/EC (Recast Directive); CARICOM Model Legislation on Sexual Harassment, clauses 3 and 4.

<sup>1993</sup> See, for example, *India* – CEACR, observation, 1998 (Judgement of Supreme Court of India in *Vishaka and Ors. v. the State of Rajasthan and Ors.* of 13 August 1997); *Bangladesh* – CEACR, observation, 2011 (Judgement of the Bangladesh High Court of 14 May 2009 in *Bangladesh National Women Lawyers Association v. Government of Bangladesh and Others*).

<sup>1994</sup> For example: *Madagascar* – CEACR, direct request, 2008; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2009.

<sup>1995</sup> For example: *Croatia*: Office for Gender Equality; *Denmark*: Equal Opportunities Board; *El Salvador*: Special Unit for Gender Issues and the Prevention of Discrimination in Employment; and *Namibia*: possibility for the Labour Commission to appoint a conciliator to attempt to resolve the dispute.

<sup>1996</sup> See *Sweden* – CEACR, direct request, 2009; and *El Salvador* – CEACR, direct request, 2011.

the public sectors,<sup>1997</sup> or have adopted, such as in *Fiji*, a national policy on sexual harassment in the workplace developed in consultation with the tripartite social partners, establishing the employer's responsibilities and a grievance procedure.

### *Domestic workers*

795. Current estimates of domestic workers indicate that, of the 52.6 million domestic workers worldwide, the vast majority are women (83 per cent), accounting for 7.5 per cent of female wage employment worldwide.<sup>1998</sup> As noted previously, domestic workers are often excluded from legislative protection against discrimination. However, all workers, including domestic workers, should enjoy equality of opportunity and treatment on the grounds of the Convention in all aspects of employment. Domestic workers, whether national or foreign workers, face discrimination with respect to a range of terms and conditions of work, social security and access to training with a view to promotion or better job opportunities. They are relatively isolated from other workers, and thus have little collective bargaining power, and are particularly vulnerable to abuse and sexual harassment. Legal and practical measures are needed to ensure their effective protection against discrimination.<sup>1999</sup> The Committee draws attention to the increased vulnerability of migrant domestic workers to multiple forms of discrimination due to the nature of their employment relationship, the lack of legislative protection, stereotypical views regarding gender roles and the undervaluing of this type of employment.<sup>2000</sup>

796. In some countries, progress has been noted regarding the protection of domestic workers in legislation. In *Haiti*, the Domestic Work Act provides that domestic workers will be covered by certain provisions of the Labour Code, including related to equal rights and obligations for men and women, equal remuneration, and maternity protection.<sup>2001</sup> In *Canada*, the Labour Standards Act (Quebec) was amended to cover domestic workers, following the findings that the exclusion of this predominantly female group of workers from the scope of the Act constituted indirect discrimination.<sup>2002</sup> In *Argentina*, efforts have been made to regularize domestic workers, many of whom are undocumented foreign workers, in order to improve their protection under the legislation (*Patria Grande Plan*). In addition, a special compulsory social security scheme has been established for domestic workers with contributions payable by the employer.<sup>2003</sup> The Committee considers that improving equality of treatment of domestic workers in terms of social security is an important step. It is also essential that domestic workers, foreign or national, enjoy equal opportunities and treatment and are protected against

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<sup>1997</sup> *Indonesia*: Guidelines on Sexual Harassment at the Workplace (2011); *Lesotho*: Code of good practice on sexual harassment in the workplace (2003); *Italy*: Codes of conduct on sexual harassment (2003); and *Sri Lanka*: Code of conduct and procedures to address sexual harassment in the workplace (2007).

<sup>1998</sup> *Global and regional estimates on domestic workers*, op. cit.

<sup>1999</sup> See, for example, *Argentina* – CEACR, observation, 2009.

<sup>2000</sup> See also para. 707.

<sup>2001</sup> *Haiti* – CEACR, direct request, 2010.

<sup>2002</sup> *Canada* – CEACR, direct request, 2005. See also United States (State of New York): on 31 August 2010, the Domestic Workers Bill of Rights was signed into law, amending the New York State Human Rights Law, the New York State Labor Law and the New York State Workers' Compensation Law, with a view to protecting domestic workers from harassment based on race, colour, sex, religion and national origin. The legislation is the first of its kind in the United States.

<sup>2003</sup> *Argentina* – CEACR, observation, 2010.

discrimination on all the grounds set out in the Convention in respect of all aspects of employment and occupation, including, but going beyond, social security.<sup>2004</sup>

797. The Committee draws specific attention to the Domestic Workers Convention, 2011 (No. 189), which provides comprehensive guidance on measures to ensure decent work for domestic workers, and which specifically requires ratifying States to respect, promote and realize, with respect to domestic workers, the elimination of discrimination in employment and occupation, ensure fair terms of employment as well as decent working conditions.<sup>2005</sup> The Committee considers that ratification of Convention No. 189 constitutes progress in pursuing the objective of equality enshrined in Convention No. 111.

## Religion

798. The Convention aims to provide protection against religious discrimination in employment and occupation, which often arises as a result of a lack of religious freedom or intolerance towards persons of a particular faith, a different faith, or towards those who profess no religion. The expression and manifestation of religion is also protected.<sup>2006</sup> Problems relating to the coexistence of communities of different religions may give rise to problems similar to those encountered in multi-ethnic or multinational communities. Appropriate measures need to be adopted to eliminate all forms of intolerance.<sup>2007</sup> Religious discrimination has been particularly acute in some countries where only certain religious minorities have been recognized by law, leading to severe exclusion and intolerance towards unrecognized religions.<sup>2008</sup> In other cases, provisions in the penal law regarding blasphemy which establish sentences of imprisonment for members of certain groups who, inter alia, preach or propagate their faith, whether by spoken or written words, or by visible representations, particularly affect certain religious minorities and are contrary to the Convention.<sup>2009</sup>

799. The freedom to practise a religion can be hindered by the requirements or practices of a trade or occupation, for example, in the case of religious holidays, special types of clothing or work conditions, or when taking up a certain position requires an oath incompatible with a religious belief or practice. In these cases, the worker's right to practise his or her faith or belief needs to be weighed against the need to meet the requirements inherent in the job, as provided in *Article 1(2)* of the Convention.<sup>2010</sup> However, the protection afforded by the Convention with regard to equality of opportunity and treatment without discrimination on the basis of religion would be meaningless if it did not include all aspects equally, or at very least, the most important aspects of religious practice.<sup>2011</sup> Legal provisions permitting discrimination based on religious belief against school teachers have also been considered to constitute a

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<sup>2004</sup> *ibid.*

<sup>2005</sup> Convention No. 189, *Arts 3, 6 and 11*.

<sup>2006</sup> General Survey, 1988, para. 47.

<sup>2007</sup> See, for example, *Islamic Republic of Iran* – CEACR, observation, 2011.

<sup>2008</sup> See, for example, *Islamic Republic of Iran* – CEACR, observation, 2011; and *Egypt* – CEACR, direct request, 2011.

<sup>2009</sup> See *Pakistan* – CEACR, observation, 2010.

<sup>2010</sup> Special Survey, 1996, para. 42.

<sup>2011</sup> General Survey, 1988, para. 52.

hindrance to equal opportunity and treatment, and measures should be taken to repeal such exceptions to the prohibition against discrimination.<sup>2012</sup>

800. Mandatory dress codes for women, or the prohibition of the wearing of religious signs, including head coverings, has raised issues of application under the Convention relating to discrimination based on sex and religion.<sup>2013</sup> With regard to legislation prohibiting the wearing in public schools of any conspicuous religious signs or apparel on pain of disciplinary measures, including expulsion, the Committee has found it important that measures be taken to ensure that the application of such legislation does not have the effect of reducing the opportunities of girls to find employment in the future.<sup>2014</sup> Similarly, laws or regulations prohibiting all forms of head coverings applying to men and women on university premises may have a discriminatory effect on women with regard to their access to university education, and subsequent employment.<sup>2015</sup> In other cases, the Committee has considered that regulations imposing a mandatory dress code for women in the public sector, or rules imposing observance of the Islamic veil for students in universities and higher education institutions, could have a negative impact on the employment of women in the sector or their access to education.<sup>2016</sup> Some positive steps have been noted in the area of “religious appearance or dress”, for example in *Australia* (South Australia) where legislation explicitly prohibits discrimination on this ground.<sup>2017</sup>

**801. *Discrimination on the basis of actual or perceived religion, combined with exclusions and distinctions based on other grounds such as race, national extraction, sex and social origin, as well as nationality, appears to have acquired greater significance, especially in the context of increasing global movements of people looking for better opportunities, and concerns about countering and preventing terrorism. Measures to promote tolerance and coexistence among religious, ethnic and national minorities and awareness-raising on the existing legislation prohibiting discrimination are therefore essential to achieving the objectives of the Convention.***

#### Social origin

802. Discrimination and lack of equal opportunities based on social origin refers to situations in which an individual’s membership of a class, socio-occupational category or caste determines his or her occupational future, either because he or she is denied access to certain jobs or activities, or is assigned only certain jobs. It may include household registration if privileges are attached to this registration.<sup>2018</sup> Even in societies with considerable social mobility, or in less highly stratified societies, a number of obstacles continue to prevent effective equality of opportunity for various social

<sup>2012</sup> See, for example, *United Kingdom, Northern Ireland* – CEACR, direct request, 2011 and observation, 2012 (the Fair Employment and Treatment (NI) Order, 1998 (section 71)).

<sup>2013</sup> See *Denmark* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2009; and *United Kingdom* – CEACR, direct request, 2010.

<sup>2014</sup> *France* – CEACR, observation, 2011, Act No. 2004-228 of 15 March 2004 and its implementing circular No. 2004-084 of 18 May 2004 concerning the prohibition of wearing in public schools any conspicuous religious signs or apparel on pain of disciplinary measures including expulsion: the Committee has considered that its application needs to be regularly reviewed and it should be ensured that pupils who have been expelled nonetheless have adequate opportunities to acquire education and training.

<sup>2015</sup> See, for example, *Turkey* – CEACR, observation, 2011.

<sup>2016</sup> See *Islamic Republic of Iran* – CEACR, observation, 2006.

<sup>2017</sup> *Australia* – CEACR, observation, 2011 (Amendments to the South Australia Equal Opportunity Act, 1984).

<sup>2018</sup> See *China* – CEACR, direct request, 2009.

categories.<sup>2019</sup> Changes in the structure and dynamics of the labour market are redefining patterns of social stratification and social mobility.<sup>2020</sup>

803. In a number of countries, the ground of social origin is not covered in the legislation,<sup>2021</sup> although there has been recent progress, for example in *Belgium*, with regard to amendments incorporating this ground into equality legislation.<sup>2022</sup> National legislation sometimes refers to social status, defining it in terms broad enough to cover social origin as understood in the context of the Convention.<sup>2023</sup> In others, the ground of “social condition” has been defined as covering “social origin”.<sup>2024</sup>

804. Over the past 15 years, the Committee has addressed social origin discrimination in a number of countries,<sup>2025</sup> which persists despite legislation and affirmative action measures, and some of which relates to long-standing deeply entrenched discrimination faced by certain castes in respect of employment and occupation. The Committee notes in this regard that Dalits, and largely Dalit women, are usually engaged in the practice of manual scavenging due to their social origin, and a range of measures have been taken to address this practice; however, despite these efforts, many people still find themselves trapped in this inhumane and degrading practice.<sup>2026</sup> The Committee notes that it has been observed in some countries that persons emanating from certain geographical areas or socially disadvantaged segments of the population (other than persons with an ethnic minority background) face exclusions with respect to recruitment, without any consideration of their individual merits.<sup>2027</sup> Indications regarding the rise in social inequalities in some countries have highlighted the continuing relevance of addressing discrimination based on class and socio-occupational categories.<sup>2028</sup>

## Political opinion

805. Protection against discrimination on the basis of political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions. It also covers discrimination based on political affiliation. The protection of political opinion applies to opinions which are either expressed or demonstrated, but does not apply where violent methods are

<sup>2019</sup> General Survey, 1988, paras 54–56; and Special Survey, 1996, paras 43–44. See also *India* – CEACR, observation, 2009.

<sup>2020</sup> *Time for Equality at Work*, Global Report on the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 91st Session, 2003, p. 2. Societal attitudes towards a concentration of certain formerly or presently stigmatized or marginalized social, ethnic or national groups may perpetuate new forms of discrimination based on a person’s social origin; see also *China* – CEACR, direct request, 2009.

<sup>2021</sup> See, for example, *Austria* – CEACR, direct request, 2010; *Belarus* – CEACR, direct request, 2011; *Netherlands* – CEACR, observation, 2010; and *Sweden* – CEACR, direct request, 2010.

<sup>2022</sup> *Belgium* – CEACR, observation, 2009.

<sup>2023</sup> The Constitutional Court of the *Republic of Korea* defined “social status” in 1995 as the “status a person occupies for a long term, and that is accompanied by social estimation”.

<sup>2024</sup> See *Canada* – CEACR, observation, 2011.

<sup>2025</sup> See, for example, *Bangladesh* – CEACR, observation, 2011; *China* – CEACR, direct request, 2010; *India* – CEACR, observation, 2010; *Nepal* – CEACR, observation, 2009; *Pakistan* – CEACR, observation, 2010; and *Sri Lanka* – CEACR, direct request, 2009.

<sup>2026</sup> See, for example, *India* – CEACR, observation, 2010. See also Conference Committee on the Application of Standards: *India* – conclusions, Convention No. 111, 2007.

<sup>2027</sup> See, for example, *Austria* – CEACR, direct request, 2008.

<sup>2028</sup> See, for example, *Canada* – CEACR, observation, 2011.

used.<sup>2029</sup> The protection afforded by the Convention is not limited to differences of opinion within the established framework of principles.<sup>2030</sup> The general obligation to conform to an established ideology or to sign an oath of political allegiance is discriminatory.<sup>2031</sup> Cases where political opinion is taken into consideration as a prerequisite for a given job should be objectively examined under judicial scrutiny to determine whether this prerequisite is actually justified by the inherent requirements of the particular job.<sup>2032</sup> While in a number of countries discriminatory laws and the absence of adequate legal protection against discrimination based on political opinion remain an issue, others have recently included “political opinion” as a prohibited ground or have repealed discriminatory laws setting out restrictions based on political opinion.<sup>2033</sup> Although the effects of discrimination based on political opinion are primarily related to the public service,<sup>2034</sup> they are not confined thereto, partly because distinctions between the public and private sectors are becoming increasingly blurred. The Committee has continued to monitor employment restrictions in the public service affecting persons linked to former political systems, for example, in Central and Eastern Europe.<sup>2035</sup>

#### *Additional grounds of discrimination under Article 1(1)(b)*

806. The seven grounds listed in *Article 1(1)(a)* of the Convention represent a minimum standard on which agreement was reached in 1958. The Convention also provides for the determination of additional grounds of discrimination, after consultation with representative employers’ and workers’ organizations, and with other appropriate bodies.<sup>2036</sup> This participation of employers’ and workers’ organizations, either directly or through a specialized body, is of particular importance since it provides an additional guarantee of the acceptance and implementation of national policies adopted in accordance with the Convention.<sup>2037</sup>

807. There has been a clear trend towards the inclusion in national legislation of a broad range of prohibited grounds of discrimination, beyond those set out in the Convention.<sup>2038</sup> The Committee welcomes that countries are increasingly making use of the possibility provided under *Article 1(1)(b)*, and are taking measures, including

<sup>2029</sup> See Special Survey, 1996, para. 45.

<sup>2030</sup> General Survey, 1988, para. 57; see also, for example, *Cuba* – CEACR, direct request, 2012.

<sup>2031</sup> See *Bolivarian Republic of Venezuela* – CEACR, observation, 2010.

<sup>2032</sup> Special Survey, 1996, para. 47; *Czech Republic* – CEACR, observation, 2010. See also paras 827–831 below.

<sup>2033</sup> See *Argentina* – CEACR, observation, 2004; *Mozambique* – CEACR, observation, 1998; *New Zealand* – CEACR, observation, 2003; *Paraguay* – CEACR, observation, 2007; and *Slovakia* – CEACR, observation, 1998.

<sup>2034</sup> See General Survey, 1988, paras 57–63, for a description of the various manifestations in law and in practice of political opinion, which is prevalent in the public service.

<sup>2035</sup> See *Albania* – CEACR, direct request, 2010; *Czech Republic* – CEACR, observation, 2012; and *Lithuania* – CEACR, observation, 2010. In a related ruling in July 2004, in *Sidabras and Džiautas v. Lithuania*, the European Court of Human Rights relied on Convention No. 111 and the practice of the ILO supervisory bodies regarding employment restrictions based on political opinion. The Court cited the Committee’s General Surveys and relevant individual observations.

<sup>2036</sup> *Art. 1(1)(b)*.

<sup>2037</sup> Responses in several reports under art. 19 of the Constitution indicate that the social partners have participated in determining additional grounds of discrimination through their participation in the legislative process (*Benin, Côte d’Ivoire, Cyprus, Luxembourg, South Africa and Zimbabwe*).

<sup>2038</sup> In its 1996 Special Survey, the Committee elaborated upon legislative developments regarding the grounds of age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation, state of health and trade union membership.



providing legislative protection, to address discrimination based on additional grounds, such as age, health, disability, HIV and AIDS, employment status, nationality, sexual orientation, and gender identity. From the information on law and practice available to the Committee, the number and type of additional grounds that have been added varies considerably among countries. It is thus impossible to draw up an exhaustive list of grounds that might result in discrimination, and new grounds are likely to emerge and become widespread in future.

808. While the Convention does not set out a particular mechanism for States to extend the coverage of the Convention to additional grounds, the Committee has considered that when information received from governments and workers' and employers' organizations indicates that legislation or policies concerning discrimination based on additional grounds have been adopted after consultation with the social partners, the Government has availed itself of the possibility envisaged under *Article 1(1)(b)*.<sup>2039</sup> However, the Committee is concerned that in some countries, upon the adoption of new labour legislation, previously available protection against discrimination based on additional grounds has been withdrawn. In such cases, the Committee has asked governments to hold consultations with the representative employers' and workers' organizations and other appropriate bodies concerning these additional grounds with a view to maintaining the previous level of protection.<sup>2040</sup>

809. It should also be noted that a number of other ILO instruments specifically prohibit discrimination or contain prohibited grounds of discrimination other than those referred to in *Article 1(1)(a)* of Convention No. 111, including, for example, trade union membership, age and disability.<sup>2041</sup>

#### Real or perceived HIV status

810. The Committee welcomes the rapid development of the inclusion in legislation of HIV status as a prohibited ground of discrimination, and related policies. With respect to real or perceived HIV status as a prohibited ground of discrimination, some member States provide such protection as a constitutional right.<sup>2042</sup> Some provide protection for real or perceived HIV status under other prohibited grounds of discrimination, such as "disability", "health", "other status", etc.<sup>2043</sup> Other member States have integrated real or perceived HIV status as a specific prohibited ground of discrimination in their national labour legislation.<sup>2044</sup> Some have issued specific policies, codes of practices, etc. for the employment relationship,<sup>2045</sup> while in others anti-discrimination clauses have

<sup>2039</sup> See *Austria* – CEACR, direct request, 2008; *France* – CEACR, observation, 2010; *Malta* – CEACR, direct request, 2012; and *South Africa* – CEACR, observation, 2005. See also the representation under article 24 of the ILO Constitution by the General Confederation of Labour – *Force ouvrière* alleging non-observance by *France* (GB.300/20/6), which addressed age discrimination in the context of *Art. 1(1)(b)*.

<sup>2040</sup> See *Czech Republic* – CEACR, observation, 2010 (Family responsibilities, marital or family status or membership of, or activity in, political parties, trade unions or employers' organizations); *Kazakhstan* – CEACR, observation, 2011 (citizenship); and *Namibia* – CEACR, observation, 2010 (sexual orientation).

<sup>2041</sup> See Special Survey, 1996, para. 243. See also para. 650 above.

<sup>2042</sup> See *Burundi* – CEACR, direct request, 2008; and *Ecuador* – CEACR, observation, 2010. The South African Constitutional Court has interpreted the national Constitution to cover HIV status as a prohibited ground of discrimination: Case No. CCT 17/00, Judgment of 28 September 2000.

<sup>2043</sup> See, for example, *Canada* – CEACR, observation, 1993; and *United Kingdom* – CEACR, observation, 2007.

<sup>2044</sup> See *Burundi* – CEACR, observation, 2007; *Central African Republic* – CEACR, direct request, 2010; *Kenya* – CEACR, observation, 2010; *Mozambique* – CEACR, direct request, 2010; *Namibia* – CEACR, observation, 2010; *Seychelles* – CEACR, direct request, 2009; *Uganda* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, direct request, 2003.

been included in collective agreements.<sup>2046</sup> General HIV and AIDS laws have been adopted in some member States, with some containing sections providing specific protection to prevent HIV-related stigma and discrimination in the context of the employment relationship.<sup>2047</sup>

811. Legislation and policies sometimes limit protection from employment-related discrimination and stigma to persons living with HIV, that is, to persons who are in fact HIV-positive. National laws and policies should provide for protection from discrimination and stigma on the basis of “real or perceived HIV status”, as contemplated in the HIV and AIDS Recommendation, 2010 (No. 200), in order to cover those discriminated against on the basis of stereotyping.<sup>2048</sup> Protection should cover those affected by HIV, such as family members and children who are orphaned or vulnerable due to HIV or AIDS, and migrant workers.

812. *Recommendation No. 200 provides considerable guidance in terms of addressing discrimination based on HIV and AIDS.*<sup>2049</sup> *The resolution adopted by the International Labour Conference upon the adoption of the Recommendation, calls for the promotion of the extension under Article 1(1)(b) of Convention No. 111 “so that the protection afforded under the Convention is extended to real or perceived HIV status”.*<sup>2050</sup> *The Committee encourages governments that have not yet done so to extend the application of the Convention as proposed in the resolution.*

## Age

813. Addressing discrimination based on age has become an important part of public policy in a number of countries.<sup>2051</sup> Under the Convention, age is considered a physical condition for which there are particular needs and in respect of which special measures of protection and assistance may be necessary.<sup>2052</sup> Age discrimination relates primarily to age limits imposed in access to particular occupations, a compulsory retirement age and unjustified restrictions between men and women regarding entitlement to social security benefits.<sup>2053</sup> Many countries have recently changed their legislation to bring both sexes onto an equal footing in respect of retirement age.<sup>2054</sup> Vaguely formulated

<sup>2045</sup> See *Nicaragua* – CEACR, direct request, 2010; and *Jamaica*, direct requests 2007 and 2008.

<sup>2046</sup> See *Argentina* – CEACR, observation, 2009. The General Workers Union – *Portugal* (UGT) indicates that it has advocated the introduction in collective agreements of non-discrimination clauses covering HIV status. UGT also promotes awareness raising on Recommendation No. 200 (report under art. 19 of the Constitution).

<sup>2047</sup> See *Botswana* – CEACR, direct request, 2004; *Canada* – CEACR, observation, 1993, and direct request, 1994; *Chad* – CEACR, observation, 2010; *China* – CEACR, direct request, 2010; *Djibouti* – CEACR, direct request, 2009; *Madagascar* – CEACR, observation, 2008; *Papua New Guinea* – CEACR, direct request, 2010; *Philippines* – CEACR, direct request, 2001; and *Romania* – CEACR, observations, 2006 and 2008.

<sup>2048</sup> See *Paras 3(c) and 9–11*. Stereotyping arises, for example, because the persons concerned belong to regions of the world or segments of the population perceived to be at greater risk or vulnerable to HIV infection, including men who have sex with men, injecting drug users and sex workers.

<sup>2049</sup> *Para. 3(c)*. See also Case No. TST-RR-104.900-64.2002.5.04.0022 of the Superior Labour Court of Brazil (September 2011) and Case No. JS178/09 of the Labour Court of *South Africa*, both referring specifically to Convention No. 111 and Recommendation No. 200, in determining that there had been discrimination.

<sup>2050</sup> Resolution concerning the promotion and the implementation of the Recommendation on HIV and AIDS and the world of work, adopted by the Conference in 2010, para. 8. See also *Para. 9* of Recommendation No. 200.

<sup>2051</sup> See Special Survey, 1996, paras 61–62 and 247–254.

<sup>2052</sup> *Art. 5(2)*. See also Older Workers Recommendation, 1980 (No. 162), *Paras 3* and *5*. See also paras 836–837 below.

<sup>2053</sup> Special Survey, 1996, paras 247–254.

<sup>2054</sup> See General Survey, 2011, paras 222–223.

legal provisions, for example allowing discrimination “which has a just cause” or provisions in collective agreements permitting different treatment of persons under the age of 18 in respect of remuneration, may lead to unjustified restrictions based on age, and the Committee closely follows the practical application of such provisions.<sup>2055</sup> Age discrimination may also arise when, for example, seniority systems prolong the effects of previous discriminatory practices with regard to women and ethnic minorities, leading to multiple discrimination. Younger workers may also be particularly affected by age discrimination, especially in the context of economic downturns.<sup>2056</sup>

814. Over the past 15 years, the Committee has noted steady and rapid progress in the adoption of legal provisions prohibiting discrimination on the basis of age. A number of countries have included “age” in their constitution, such as the new Constitution of the *Dominican Republic*.<sup>2057</sup> In most cases, the ground of age has been included in general labour legislation<sup>2058</sup> or in specific anti-discrimination or equality acts, especially in Europe.<sup>2059</sup> Other countries have adopted specific legislation prohibiting age discrimination, such as in the *Republic of Korea*, where the Act on prohibition of age discrimination in employment and employment promotion for the aged introduces a ban on age discrimination, including indirect discrimination at every stage of employment.<sup>2060</sup> In some countries, legislation specifically provides that awards and enterprise agreements must include terms that prohibit discrimination based on age.<sup>2061</sup> The Committee particularly welcomes clauses in collective agreements aimed at eliminating discrimination on this ground. For example, the General Collective Labour Agreement for the Central Public Administration in *Argentina* provides that the parties agree to eliminate any measure or practice which produces discriminatory treatment or inequality between workers based on, among other grounds, age.

815. To address de facto inequalities that may exist for older or younger workers, some countries have provided for special measures, including affirmative action in their Constitution or labour legislation, in accordance with *Article 5(2)* of the Convention.<sup>2062</sup> The Committee has been able to observe that in a wide range of countries, across regions, practical measures, policies and programmes are being taken to address the situation of older or younger workers, ranging from studies, promotional and awareness

<sup>2055</sup> See *Denmark* – CEACR, direct request, 2010; and *Norway* – CEACR, direct request, 2011. See also *Austria* – CEACR, direct request, 2010: The Committee noted with interest that the Vienna Provincial High Court in April 2007 held that there was discrimination on the ground of age under the collective agreement for the meat industry to the extent that it provided for different wage levels for shop assistants above 18 years of age in their first two years, and trainees in the same job under the age of 18.

<sup>2056</sup> See *Equality at Work: The continuing challenge*, op. cit., p. 50.

<sup>2057</sup> *Dominican Republic* – CEACR, observation, 2011 (art. 39 of the Constitution of 26 January 2010).

<sup>2058</sup> For example, *Algeria* – CEACR, observation, 2011; *Australia* – CEACR, observation, 2011; *China (Macau Special Administrative Region)* – CEACR, observation, 2011; *Chad* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2008; *Georgia* – CEACR, observation, 2009; *Kazakhstan* – CEACR, observation, 2011; *Luxembourg* – CEACR, observation, 2008; *Norway* – CEACR, observation, 2011; *Portugal* – CEACR, observation, 2006; and *Russian Federation* – CEACR, observation, 2008. See also Republic of Maldives, Employment Act, 2008.

<sup>2059</sup> See *Croatia* – CEACR, observation, 2011; *Cyprus* – CEACR, observation, 2007; *Germany* – CEACR, observation, 2007; *Israel* – CEACR, observation, 2009; *Slovakia* – CEACR, observation, 2006; *Slovenia* – CEACR, observation, 2006; *Romania* – CEACR, observation, 2008; *Serbia* – CEACR, observation, 2010; and *Sweden* – CEACR, observation, 2010.

<sup>2060</sup> *Republic of Korea* – CEACR, observation, 2009.

<sup>2061</sup> *Australia* – CEACR, observation, 2011.

<sup>2062</sup> For example, *Equatorial Guinea* – CEACR, direct request, 2011.

campaigns,<sup>2063</sup> inclusion in equality plans<sup>2064</sup> and equality labels.<sup>2065</sup> Countries are also paying increased attention to including young persons in employment promotion programmes, specific training and vocational training programmes.<sup>2066</sup>

## Disability

816. The principle of equality of opportunity and treatment between persons with disabilities and other workers is also enshrined in the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159),<sup>2067</sup> and in the United Nations Convention on the Rights of Persons with Disabilities, 2006. Disability discrimination manifests itself in many ways and is often structural due to exclusion and stigmatization starting at a very early age. Failure to provide reasonable accommodation is widely considered to be an unacceptable form of discrimination.<sup>2068</sup>

817. The Committee has been able to note recent advancements in a number of countries in addressing discrimination based on disability and in promoting equality for persons with disabilities through the adoption of legislative and practical measures. Over the last ten years, provisions prohibiting discrimination in employment on the basis of disability have been included in several constitutions,<sup>2069</sup> general labour legislation,<sup>2070</sup> specific anti-discrimination or equality legislation,<sup>2071</sup> specific legislation on disability,<sup>2072</sup> legislation covering the civil service<sup>2073</sup> and penal codes.<sup>2074</sup> The ground of disability has also been included in collective agreements and codes of conduct.<sup>2075</sup> In a number of countries, legislation provides, in general terms, that special measures for persons with

<sup>2063</sup> *Ireland* – CEACR, direct request, 2011; and *Mexico* – CEACR, direct request, 2011.

<sup>2064</sup> *Honduras* – CEACR, direct request, 2010.

<sup>2065</sup> *Belgium* – CEACR, direct request, 2011.

<sup>2066</sup> See *France* – CEACR, observation, 2011; *Haiti* – CEACR, direct request, 2010; *Honduras* – CEACR, direct request, 2010; *Jordan* – CEACR, direct request, 2008; *Morocco* – CEACR, direct request, 2009; *Peru* – CEACR, direct request, 2010; and *Tunisia* – CEACR, direct request, 2010.

<sup>2067</sup> Ratified by 82 member States (as of 9 December 2011).

<sup>2068</sup> See *Achieving equal employment opportunities for people with disabilities through legislation: Guidelines* (Geneva, ILO, 2007), p. 30. See also art. 27(1)(i) of the United Nations Convention on the Rights of Persons with Disabilities to which 109 countries are party.

<sup>2069</sup> For example, *Dominican Republic, Ecuador, Eritrea, Finland, Rwanda and Switzerland*.

<sup>2070</sup> For example, in *Albania, Australia, Bahamas, China, Fiji, Kazakhstan, Kenya, Latvia, Malawi, Malta, Republic of Moldova, Morocco, Niger, Norway, Poland and Portugal*.

<sup>2071</sup> For example, in *Belgium, Bulgaria, Croatia, Germany, Greece, Guyana, Hungary, Ireland, Italy, Luxembourg, Malta, Romania, Serbia, Slovakia, Sweden and Trinidad and Tobago*.

<sup>2072</sup> For example, in *Canada, Ethiopia, Norway, Panama, Republic of Korea, Slovenia, Uganda and United Kingdom*.

<sup>2073</sup> For example, in *Afghanistan, France, Luxembourg and the Philippines*.

<sup>2074</sup> See *Turkey* – CEACR, observation, 2011 (section 122 of the Penal Code provides for imprisonment for a term of six months to one year or a judicial fine in the case of discrimination on a number of grounds, including disability).

<sup>2075</sup> See *Argentina* – CEACR, observation, 2009 (2006 General Collective Agreement for the Central Public Administration); *Belgium* – CEACR, direct request, 2011 (Collective agreement No. 95 concluded 10 October 2008); and *Mauritius* – CEACR, direct request, 2006: Code of Conduct for a Conflict Free Workplace (2003). In *Slovenia*, legislation provides that employers must consider the ILO Code of practice on managing disability in the workplace so as to ensure equal opportunities of disabled persons in employment.

disabilities shall not be considered discrimination, in accordance with *Article 5(2)* of the Convention.<sup>2076</sup>

818. Other laws provide for the adoption of affirmative action measures, including quotas.<sup>2077</sup> The Committee particularly welcomes specific legislation providing comprehensive protection against discrimination and promoting equal opportunities for persons with disabilities. For example, in *Norway*, the Disability and Accessibility Act applies to all employment and occupation, and defines and prohibits direct and indirect discrimination, harassment and victimization. It also contains provisions on reasonable accommodation and the burden of proof. Public authorities, as well as public and private employers, are obliged to make active, targeted and systematic efforts to prevent discrimination and ensure equal opportunities, and to report thereon, and employers' and workers' organizations have a corresponding duty.<sup>2078</sup> In addition promoting equal opportunities of persons with disabilities has been addressed through national employment policies, special incentives, creation of specific government structures, awareness raising and training, including for labour inspectors, and comprehensive skills training programmes.<sup>2079</sup>

819. Despite the progress made, legislative gaps exist. For example, in some countries legal protection against discrimination based on disability does not cover all aspects of employment, for example, omitting dismissal,<sup>2080</sup> or it allows for restrictions when it can be demonstrated that the job requirements relied on as a ground for hiring the disabled person at a lower rate of pay are "reasonable".<sup>2081</sup> In this regard, the Committee recalls the principle of the Convention that effective protection against discrimination should be provided in respect of all aspects of employment and occupation. The Committee also recalls that exceptions relating to inherent requirements of a particular job should be interpreted restrictively and on a case-by-case basis.<sup>2082</sup>

## Nationality

820. Protection against discrimination based on actual or perceived nationality and ensuring and promoting equal opportunities and treatment in the labour market is fundamental to migrant workers. In the present context of the increasing movement of male and female workers looking for better job opportunities in countries other than their

<sup>2076</sup> See *Mozambique* – CEACR, direct request, 2010. Pursuant to section 54(2) of the Labour Act No. 23/2007, measures targeting certain disadvantaged groups on the basis of their disability shall not be considered discrimination, and pursuant to section 28(1) employers shall promote the adoption of appropriate measures to enable persons with disabilities to enjoy the same rights as other workers with respect to access to employment, vocational training and promotion. Under section 28(3) special measures may be established by law or collective labour regulation instruments. See also paras 836–837 below.

<sup>2077</sup> See *Ethiopia* – CEACR, observation, 2012; and *Slovakia* – CEACR, observation, 2010. With regard to quotas, see *Plurinational State of Bolivia*, direct request 2008; *Nepal* – CEACR, observation, 2009; *Slovenia* – CEACR, observation, 2008; and *Turkmenistan* – CEACR, direct request, 2011.

<sup>2078</sup> *Norway* – CEACR, direct request, 2011 (Act of 2008).

<sup>2079</sup> Examples of national employment policies include: *Gambia* – CEACR, direct request, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, direct request, 2010 (special incentives or procurement policies); *Canada (Quebec)* – CEACR, direct request, 2011; *Spain* – CEACR, direct request, 2011 (special structures in Government); *Panama* – CEACR, direct request, 2008; *Poland* – CEACR, direct request, 2007 (awareness raising and training); *Mexico* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2008. In its report under art. 19 of the Constitution, the Government of Thailand refers to the establishment of the Fund for Empowerment of Persons with Disabilities.

<sup>2080</sup> See *Namibia* – CEACR, observation, 2010.

<sup>2081</sup> See, for example, *Bahamas*, sections 6 and 7 of the Employment Act.

<sup>2082</sup> See paras 827–831 below.

own, the Committee draws attention to *Paragraph 8* of Recommendation No. 111: with respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949 (No. 97), relating to equality of treatment and to those of its accompanying Recommendation No. 86 relating to the lifting of restrictions on access to employment.<sup>2083</sup> The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), contains the same definitions and terms as those given in Convention No. 111 and provides for the adoption and implementation of a national policy designed to promote and guarantee equality of opportunity and treatment for persons who as migrant workers or as members of their family are lawfully admitted to the territory.<sup>2084</sup>

821. The actual or perceived nationality of certain workers is, in many cases, used as a reason for different treatment. The Committee welcomes the fact that an increasing number of countries have included the grounds of nationality or citizenship in their constitutions and national legislation.<sup>2085</sup> Many migrants face multiple discrimination, as nationality often intersects with other grounds and it may be difficult to determine whether discriminatory treatment faced by migrant workers is exclusively based on their nationality, or on racial, ethnic, religious or other grounds.<sup>2086</sup> In some cases, the Committee has addressed this problem in the context of discrimination based on the grounds set out in *Article 1(1)(a)*.<sup>2087</sup>

822. The Committee welcomes the measures taken in several countries with a view to improving equality of opportunity and treatment of foreign workers and their integration in the labour market. Some positive steps have been noted, such as the National Plan for Labour Regularization in *Argentina*, diversity charters and integration programmes in some European countries, and measures addressing employment agencies.<sup>2088</sup> For example, legal provisions have been adopted in *Spain* to regulate the registration of

<sup>2083</sup> See *Discrimination in the field of employment and occupation*, Report VII(2), ILC, 40th Session, Geneva, 1957, p. 111, on the reasons why the position of foreign immigrants should be mentioned in the Recommendation.

<sup>2084</sup> In accordance with the migrant workers instruments, not only should migrant workers lawfully within the territory of a ratifying State enjoy equal treatment (*Art. 6* of Convention No. 97), they should also benefit from a national policy designed to promote equality of opportunity and treatment (Part II of Convention No. 143), which implies the adoption of positive measures (*Arts 10 and 12*). *Para. 16(1)* of Recommendation No. 86 provides for the possibility for migrants authorized to reside in a territory and members of their families to be admitted to employment in the same conditions as nationals.

<sup>2085</sup> For example, *Chad*, Labour Code (Act No. 38/PR/96); *Djibouti*, Labour Code 2006; *Eritrea*, Labour Proclamation No. 118 of 2001; *Finland*, Non-discrimination Act (21/2004); *Japan*, Labour Standards Act; *Kenya*, Employment Act 2007; *Republic of Korea*, Labour Standards Act (Law No. 5309); *Lithuania*, Labour Code 2002; *Republic of Moldova*, Labour Code of 2003; *Mongolia*, Law on Employment Promotion 2001; *Serbia*, Act on the Prohibition of Discrimination No. 22/09; *Seychelles*, Employment (Amendment) Act, 2006; *Syrian Arab Republic*, Labour Law, 2010; and *Tajikistan*, Labour Code 1997.

<sup>2086</sup> See in this context, United Nations Committee on the Elimination of Racial Discrimination (CERD) *general Recommendation No. 30 on discrimination against non-citizens*, 10/01/2004, which provides that under the Convention differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the legitimate light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

<sup>2087</sup> See paras 776–781 above. See also on nationality, discrimination and migrant workers: *Equality at work: The continuing challenge*. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 100th Session, 2011, pp. 34–40.

<sup>2088</sup> *Argentina* – CEACR, observation, 2011; *Denmark* – CEACR, direct request, 2011; and *France* – CEACR, observation, 2011.

non-European Union workers in public employment services and employment agencies.<sup>2089</sup>

823. The Committee considers that Conventions Nos 97 and 143 and the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) are complementary and mutually reinforcing. The Committee also draws attention to the “ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration”, adopted by an ILO tripartite meeting of experts in 2005. The Framework could assist countries in adopting national policies designed to promote equality of opportunity and treatment for migrant workers and to protect them against discrimination.

### Sexual orientation and gender identity

824. The Committee is encouraged by the increasing number of member States that have included the ground of sexual orientation in constitutional guarantees and legislative provisions on equality reflecting the recognition of the need to ensure equality of opportunity and treatment and non-discrimination for lesbian, gay, bisexual and transgender people. The ground of perceived or actual sexual orientation is not specifically stated in the Convention,<sup>2090</sup> although legislation in some States determines that the criterion of sex or gender includes sexual orientation.<sup>2091</sup> In recent years, further progress has been noted in a range of countries regarding legislative and practical measures aimed at eliminating discrimination on the basis of this ground and promoting equality of opportunity and treatment in employment of lesbian, gay, bisexual and transgender people.<sup>2092</sup> The progressive legal recognition in a number of countries of marriage or cohabitation of same-sex couples reflects a growing awareness of the need to provide employment rights and benefits derived from legally recognized marriage or partnership.<sup>2093</sup>

825. In Europe, the Charter of Fundamental Rights of the European Union prohibits any discrimination based on sexual orientation<sup>2094</sup> and European Union Member States have aligned their national legislation on equality with the Framework Directive on Equal Treatment. In some countries, such as *Ecuador*, sexual orientation has been included in the Constitution. In *Australia*, *China*, *Mauritius* and *Mozambique*, this ground has been included in the general labour legislation. Sexual orientation has also been referred to in human rights legislation or in specific legislation on non-discrimination and equal treatment, for example, in *Canada*, *Mexico*, *Malta* and *South Africa*. The Equality Act of the *United Kingdom* refers to both sexual orientation and gender reassignment, and the non-discrimination legislation in *Albania* and *Serbia* prohibits discrimination based on

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<sup>2089</sup> *Spain* – CEACR, observation, 2008.

<sup>2090</sup> Sexual orientation is referred to in the Private Employment Agencies Recommendation, 1997 (No. 188), *Para. 9*, and in Recommendation No. 200, *Para. 14(e)*.

<sup>2091</sup> See, for example, *Croatia*, Gender Equality Act of 2008.

<sup>2092</sup> See, for example, *South Africa* – CEACR, observation 2005. The Committee noted with interest South Africa’s confirmation that it considers sexual orientation, age, disability, culture and language set out in its equality legislation as grounds to be covered under the Convention.

<sup>2093</sup> See, for example, *Argentina*, Act No. 26618, 21 July 2010. See also *Römer v. City of Hamburg*, 10 May 2011, in which the Court of Justice of the European Union ruled that if the State restricts civil marriage to opposite-sex couples, it must nevertheless grant same-sex couples, despite not being married, access to all the employment benefits for married couples.

<sup>2094</sup> 2000/C364/01, Article 21(1).

sexual orientation and gender identity.<sup>2095</sup> Discrimination in employment and occupation on the basis of sexual orientation has also been addressed through collective agreements, surveys, and complaints structures.<sup>2096</sup>

### Measures not deemed to be discrimination

826. Not all distinctions, exclusions and preferences are deemed to be discrimination within the meaning of the Convention. These include: (i) measures based on the inherent requirements of a particular job (*Article 1(2)*); (ii) measures warranted by the protection of the security of the state (*Article 4*); and (iii) special measures designed for protection and assistance (*Article 5*).

#### *Distinctions, exclusions or preferences based on inherent requirements*

827. Pursuant to *Article 1(2)* of the Convention, any “distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination”. In its General and Special Surveys of 1988 and 1996, the Committee provided detailed explanations of the meaning of this exception and the manner in which it should be applied.<sup>2097</sup> As problems regarding the application of this provision continue to arise, it is important to recall that the exception must be interpreted restrictively so as to avoid undue limitation of the protection that the Convention is intended to provide.<sup>2098</sup>

828. The concept of “a particular job” refers to a specific and definable job, function or tasks, and any limitation must be required by the characteristics of the particular job, in proportion to its inherent requirements.<sup>2099</sup> Systematic application of requirements involving one or more of the grounds of discrimination set out in the Convention is inadmissible. In no circumstances should the same requirement involving one or more of the grounds of discrimination be applied to an entire sector of activity or occupation, especially in the public service.<sup>2100</sup> Careful examination of each individual case is required. The general exclusion of certain jobs or occupations, including in export processing zones or the public service, from the scope of the measures intended to promote equality of opportunity and treatment is contrary to the Convention.<sup>2101</sup>

829. Most of the cases regarding the application of *Article 1(2)* addressed by the Committee have related to distinctions based on sex, religion, political opinion or national extraction restricting access to employment and occupation.<sup>2102</sup> The complexity

<sup>2095</sup> *United Kingdom*, Equality Act 2010, sections 7 and 12; *Albania*, Protection from Discrimination Law (No. 10221, 2010), section 1; and *Serbia*, Act on Prohibition of Discrimination No. 22/09 of 2009, section 2(1).

<sup>2096</sup> *Italy* – CEACR, direct request, 2011: The Department of Equal Opportunities and National Statistics Institute conducted from 2009–11 the first multipurpose survey on discrimination based on gender, sexual orientation and gender identity and ethnic origin. *Argentina* – CEACR, observation, 2010 (General Labour Agreement for the Central Public Administration); and *Belgium* – CEACR, direct request, 2010 (Collective Agreement No. 95).

<sup>2097</sup> See General Survey, 1988, paras 124–133, and Special Survey, 1996, paras 118–122.

<sup>2098</sup> See, for example, *Côte d’Ivoire* – CEACR, observation, 2011.

<sup>2099</sup> See, for example, *Latvia* – CEACR, observation, 2011.

<sup>2100</sup> See *Indonesia* – CEACR, observation, 2011. Section 18(i) of the Recruitment of Civil Servants, Government Regulation No. 98/2000 dated 10 November 2000, provides that civil servants are to be dismissed upon becoming members and/or leaders of political parties.

<sup>2101</sup> General Survey, 1988, para. 127, and Special Survey, 1996, para. 119.

<sup>2102</sup> See above regarding national extraction, gender equality, religion and political opinion, paras 764, 788, 798–801 and 805.



of some of the examples illustrates the importance of providing full particulars on the practical application of this provision in order to be able to assess adequately which cases can be deemed to be non-discriminatory within the meaning of the Convention, and the Committee has regularly requested such information.

830. There are very few instances where the grounds listed in the Convention actually constitute inherent requirements of the job. For example, distinctions on the basis of sex may be required for certain jobs, such as those in the performing arts or those involving physical intimacy. These distinctions should still be determined on an objective basis and take account of individual capacities.<sup>2103</sup> Overly broad exceptions in equality legislation excluding domestic workers from the protection of discrimination in respect of access to employment may lead to discriminatory practices by employers against these workers, contrary to the Convention. The Committee considers that the right to respect for private and family life should not be construed as protecting conduct that infringes the fundamental right to equality of opportunity and treatment in employment and occupation, including conduct consisting of differential treatment of candidates for employment on the basis of any of the grounds covered by *Article 1* of the Convention where this is not justified by the inherent requirements of the particular job.<sup>2104</sup>

831. Restrictions for a narrow range of jobs associated with particular religious or political institutions or non-profit organizations and organizations specifically promoting the well-being of an ethnic group may be acceptable. Criteria such as political opinion, national extraction and religion may be taken into account as inherent requirements of certain posts involving special responsibilities.<sup>2105</sup> However, the inherent requirements of the particular job must still be evaluated in the light of the actual bearing of the tasks performed on the institution's or organization's objective. Political opinion may in certain circumstances constitute a bona fide qualification for certain senior posts which are directly concerned with developing government policy.<sup>2106</sup> However, this is not the case when conditions of a political nature are laid down for public employment in general, or for certain other professions. It is essential that such restrictions are not carried beyond certain limits – to be evaluated on a case-by-case basis – as such practices may then come into conflict with the Convention's provisions calling for the implementation of a policy designed to eliminate discrimination on the basis of political opinion, in particular in respect of public employment.<sup>2107</sup> In order to come within the scope of the exception provided for in *Article 1(2)*, the criteria used must correspond in a concrete and objective way to the inherent requirements of a particular job.

### *State security versus equality*

832. Under the Convention, any “measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice”.<sup>2108</sup> Measures to protect the security of the State exist in almost all countries, and are frequently accompanied by a ban on the holding of public or elected office or on the

<sup>2103</sup> See *Saint Lucia* – CEACR, direct request, 2010.

<sup>2104</sup> See *Ireland* – CEACR, observation, 2009.

<sup>2105</sup> See *Slovakia* – CEACR, direct request, 2010.

<sup>2106</sup> Special Survey, 1996, para. 422.

<sup>2107</sup> General Survey, 1963, para. 42; General Survey, 1988, para. 127.

<sup>2108</sup> Art. 4; Recommendation No. 111, Para. 7.

exercise of certain occupations. However, in order to avoid any undue limitations on the protection which the Convention seeks to guarantee, this exception should be interpreted strictly.<sup>2109</sup>

833. Considering the increase in measures to protect state security at the national and international levels, the Committee considers it necessary to recall some principles with respect to the application of *Article 4* of the Convention.<sup>2110</sup> Firstly, the measures must affect an individual on account of activities he or she is justifiably suspected or proven to have undertaken. They become discriminatory when taken simply by reason of membership of a particular group or community.<sup>2111</sup> Secondly, the measures refer to activities qualifiable as prejudicial to the security of the State. The mere expression of opinions or religious, philosophical or political beliefs is not a sufficient basis for the application of the exception.<sup>2112</sup> Persons engaging in activities expressing or demonstrating opposition to established political principles by non-violent means are not excluded from the protection of the Convention by virtue of *Article 4*.<sup>2113</sup>

834. Thirdly, all measures of state security should be sufficiently well defined and precise to ensure that they do not become instruments of discrimination on the basis of any ground prescribed in the Convention.<sup>2114</sup> Provisions couched in broad terms, such as “lack of loyalty”, “the public interest” or “anti-democratic behaviour” or “harm to society”,<sup>2115</sup> must be closely examined in the light of the bearing which the activities concerned may have on the actual performance of the job, tasks or occupation of the person concerned.<sup>2116</sup> Otherwise, such measures are likely to entail distinctions and exclusions based on political opinion or religion, contrary to the Convention.<sup>2117</sup>

835. In addition to these substantive conditions, the legitimate application of this exception must respect the right of the person affected by the measures “to appeal to a competent body established in accordance with national practice”. It is important that the appeals body be separate from the administrative or governmental authority and offer a guarantee of objectivity and independence. It must be competent to hear the reasons for

<sup>2109</sup> Examples recently noted by the Committee include *China (Macau Special Administrative Region)*, *Congo*, *Indonesia*, *Kenya*, *Lithuania* and *Viet Nam*.

<sup>2110</sup> General Survey, 1988, paras 135–138.

<sup>2111</sup> *ibid.*, para. 135.

<sup>2112</sup> See General Survey, 1988, para. 57; Special Survey, 1996, paras 45 and 125. See also para. 805 above on political opinion.

<sup>2113</sup> See, for example, *China (Macau Special Administrative Region)* – CEACR, direct request, 2009; and *Indonesia* – CEACR, direct request, 2011.

<sup>2114</sup> See, for example, *Lithuania* – CEACR, observation, 2010.

<sup>2115</sup> See, for example, *Viet Nam* – CEACR, direct request, 2004, and observation, 2012.

<sup>2116</sup> See *Congo* – CEACR, direct request, 2011; and *Kenya* – CEACR, direct request, 2012.

<sup>2117</sup> General Survey, 1988, para. 136. See also *Lithuania* – CEACR, observation, 2010: the Committee noted that the European Court of Human Rights, in its judgement of 27 July 2004, in the case of *Sidabras and Džiautas v. Lithuania*, held that the restrictions imposed under the Act on the Evaluation of the USSR Former Permanent Employees of the Organization (SSC Act) on the applicants to apply for private sector jobs violated their rights under art. 14 (prohibition of discrimination) in conjunction with art. 8 (private life) of the European Convention on Human Rights. Taking the Committee of Expert’s surveys and observations concerning similar situations into account, the Court held that section 2 of the SSC Act was a disproportionate measure. In the Court’s view, such a legislative scheme must be considered as lacking the necessary safeguards for avoiding discrimination and for guaranteeing adequate and appropriate judicial supervision of the imposition of such restrictions (para. 59).

the measures taken against the appellant and to afford him or her the opportunity to present his or her case in full.

### *Special measures of protection and assistance*

836. *Article 5* of the Convention provides for the adoption of special measures of protection and assistance, which shall not be deemed to be discrimination. Such measures are important for ensuring equality of opportunity in practice as they address specific needs or the effects of past discrimination with a view to restoring a balance. These consist of two types. First, the special measures of protection and assistance provided for in international labour Conventions and Recommendations (*Article 5(1)*). These concern, for example, workers with family responsibilities, indigenous peoples, older workers, persons with disabilities or persons living with HIV or AIDS, as well as those protecting maternity.<sup>2118</sup> They are expressly recognized as not being discriminatory within the meaning of the Convention. The provision ensures that the ratification and application of Convention No. 111 does not come into conflict with other ILO standards covering such workers.

837. Secondly, pursuant to *Article 5(2)*, any Member may, after consultation with representative employers' and workers' organizations, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance. The term "special measures of protection or assistance" is meant to cover the widest possible range of measures concerning different categories of workers in need of protection and assistance. The measures often include affirmative action, such as the quota system for employment of scheduled castes and tribes in *India*,<sup>2119</sup> and in *Peru* where indigenous communities must represent a minimum of 15 per cent of the candidates for Congress.<sup>2120</sup>

### Protective measures versus equality

838. With regard to ILO standards governing maternity, the Committee wishes to emphasize that maternity requires differential treatment to achieve genuine equality. Maternity protection should be provided to enable women to fulfil their maternal role without being marginalized in the labour market. However, in a number of countries protective measures for women go beyond maternity protection and are thus discriminatory. The Committee emphasizes that a major shift over time has occurred from a purely protective approach concerning the employment of women to one based on promoting genuine equality between men and women and eliminating discriminatory law and practice.

839. Protective measures for women may be broadly categorized into those aimed at protecting maternity in the strict sense, which come within the scope of *Article 5*, and those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society, which are contrary to the Convention and constitute obstacles to the recruitment and

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<sup>2118</sup> For a discussion on some of these measures, see the specific sections regarding gender equality (paras 782–797), indigenous peoples (paras 767–772), disability (paras 816–819), age (paras 813–815), and real or perceived HIV status (paras 810–812).

<sup>2119</sup> See *India* – CEACR, observation, 2010.

<sup>2120</sup> *Peru* – CEACR, direct request, 2010. See also *Art. 4(1)* of Convention No. 169, which provides that special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned. See also paras 862–864 below.

employment of women.<sup>2121</sup> In many countries, general protective legislation for women has been revisited and questioned, which has resulted, in some instances, in the repeal of discriminatory provisions.<sup>2122</sup> In other countries, the revision or adoption of new labour codes have provided an opportunity to remove provisions imposing a general prohibition of night work for women, gender-based limitations on working hours and excluding women from occupations or sectors due to their sex, rather than their capacity to perform the job.<sup>2123</sup>

840. Nonetheless, in a number of countries, protective measures continue to exclude women from certain occupations due to stereotyped assumptions regarding their role and capabilities or what is “suitable to their nature”.<sup>2124</sup> ***In this regard, the Committee considers that protective measures applicable to women’s employment which are based on stereotypes regarding women’s professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. In addition, provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health.***<sup>2125</sup> With a view to repealing discriminatory protective measures applicable to women’s employment, it may be necessary to examine what other measures, such as improved health protection of both men and women, adequate transportation and security, as well as social services, are necessary to ensure that women can access these types of employment on an equal footing with men.<sup>2126</sup>

### National policy on equality

841. The primary obligation of ratifying States is to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof (*Article 2*). In moving towards this objective, appropriate measures should be adopted in line with the underlying principles enumerated in *Article 3* of the Convention and *Paragraph 2* of the Recommendation.

### *Immediate, progressive and effective application*

842. Though offering considerable flexibility, some concrete measures are immediately required under the Convention. Ratifying States must declare a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation (*Article 2*); repeal any statutory provisions and modify any administrative

<sup>2121</sup> For example, *Angola* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2008; *Cameroon* – CEACR, direct request, 2010; and *Central African Republic* – CEACR, direct request, 2010.

<sup>2122</sup> For example, *Republic of Korea* – CEACR, observation, 2007.

<sup>2123</sup> For a discussion relating to protective measures regarding night work for women, see also *Night work of women in industry*, General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 89th Session, Geneva, 2001, pp. 2–4.

<sup>2124</sup> For example, *Azerbaijan*, Decision No. 170 of 20 October 1999; and *Bangladesh*, Labour Act, 2006 (XLII of 2006), sections 39, 40, 42 and 87.

<sup>2125</sup> See *Mali* – CEACR, direct request, 2011; and *Russian Federation* – CEACR, observation, 2010.

<sup>2126</sup> See *Papua New Guinea* – CEACR, direct request, 2011.

instructions or practices inconsistent with the equality policy (*Article 3(c)*); and supply reports on the results achieved of the action taken (*Article 3(f)*). Other measures to give effect to the principle of the Convention may be implemented more progressively. These include the enactment of legislation and the promotion of educational programmes to secure the acceptance and observance of the national policy (*Article 3(b)*) and cooperation with other appropriate bodies in promoting its acceptance and observance (*Article 3(a)*).

843. The responsibility of the State in pursuing a national policy against discrimination is of particular importance.<sup>2127</sup> The State not only possesses direct means for applying the policy in public sector employment, but can also play a role in setting an example for other employers and in promoting the observance of the policy in other sectors.<sup>2128</sup> The Convention requires the State to ensure the application of the policy in respect of employment under the direct control of a national authority and in the activities of vocational guidance, vocational training and placement services under the direction of a national authority.<sup>2129</sup> In accordance with the Recommendation, the national policy should take into account that measures to promote equality of opportunity and treatment are a matter of public concern. The public authorities must, in all their activities, apply the national equality policy provided for in *Article 2* of the Convention, free of all discrimination.<sup>2130</sup>

844. *The Convention requires the national equality policy to be effective. It should therefore be clearly stated, which implies that programmes should be or have been set up, all discriminatory laws and administrative practices are repealed or modified, stereotyped behaviours and prejudicial attitudes are addressed and a climate of tolerance promoted, and monitoring put in place.*<sup>2131</sup> *Measures to address discrimination, in law and in practice, should be concrete and specific. They should make an effective contribution to the elimination of direct and indirect discrimination and the promotion of equality of opportunity and treatment for all categories of workers, in all aspects of employment and occupation and in respect of all the grounds covered by the Convention.*<sup>2132</sup> *Treating certain groups differently may be required to eliminate discrimination and to achieve substantive equality for all groups covered by the Convention.*<sup>2133</sup>

845. For the purpose of achieving the objectives of the Convention, it is essential to acknowledge that no society is free from discrimination and that continuous action is required to address it. Discrimination in employment and occupation is both universal and constantly evolving. Some manifestations of discrimination have acquired more subtle and less visible forms, which are more difficult to identify and address.<sup>2134</sup> Under the Convention, the promotion of equality of opportunity and treatment is not aimed at a stable situation, but is to be achieved in successive stages in the course of which the

<sup>2127</sup> See General Survey, 1963, para. 94.

<sup>2128</sup> See Recommendation No. 111, *Para. 3(b)*.

<sup>2129</sup> *Art. 3(d)* and *(e)*; Recommendation No. 111, *Para. 3(a)(i)* and *(ii)*.

<sup>2130</sup> See Recommendation, *Paras 2(a)* and *(c)*.

<sup>2131</sup> See, for example, *Saudi Arabia* – CEACR, observation, 2007.

<sup>2132</sup> General Survey, 1988, para. 162.

<sup>2133</sup> See paras 836–840 above, and paras 862–864 below.

<sup>2134</sup> See *Time for equality at work*, op. cit., p. 2, ILC, 2003. See also *Equality at work: The continuing challenge*, op. cit.

national equality policy must be adjusted to newly emerging forms of discrimination for which solutions must be found.<sup>2135</sup>

846. Nonetheless, a number of governments continue to assert that certain forms of discrimination addressed under the Convention do not exist in their countries,<sup>2136</sup> or that there have been no complaints of discrimination, and therefore no action is required to apply the Convention.<sup>2137</sup> A number of governments also indicate that the Convention does not give rise to any difficulties in practice, or is fully applied, without providing further information on the content of, or the means by which the national policy is applied.<sup>2138</sup> The Committee considers that such a position is contrary to the spirit of the Convention and is a considerable obstacle to its implementation.<sup>2139</sup>

847. When assessing whether a given country has declared and is pursuing a national equality policy in accordance with the Convention, the Committee has been guided by the criteria of effectiveness, taking into account the national conditions. The Convention envisages that the results achieved in the implementation of the national equality policy are being regularly assessed with a view to reviewing and adjusting existing measures and strategies on a continuing basis. Such continual monitoring, assessment and adjustment is required, not only of the measures in place to promote equality, but also of their impact on the situation of the protected groups and the incidence of discrimination.<sup>2140</sup> It is therefore essential that measures of an economic or political nature do not undermine the principles of equality and non-discrimination or adversely affect the progress achieved by previous action taken to promote equality.

### *Multifaceted policy*

848. The implementation of a national equality policy presupposes the adoption of a range of specific measures, which often consist of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness raising.<sup>2141</sup> Since its Special Survey in 1996, the Committee has been able to examine a wealth of non-discrimination and equality laws and policies. While evidencing considerable progress, the measures taken to implement the Convention are often confined to one ground or only some of the grounds, often sex and increasingly race, colour and national extraction.

849. Substantial progress has been made in many countries in adopting comprehensive gender equality policies and action plans that include employment and occupation.<sup>2142</sup>

<sup>2135</sup> CEACR, General Report, 2009, para. 106; See also *Kuwait* – CEACR, observation, 2009.

<sup>2136</sup> See, for example, *Belarus* – CEACR, direct request, 2011.

<sup>2137</sup> See, for example, *Libya* – CEACR, observation, 2008; and *Viet Nam* – CEACR, observation, 2010.

<sup>2138</sup> See, for example, *Sudan* – CEACR, observation, 2010; and *Tunisia* – CEACR, observation, 2011.

<sup>2139</sup> See CEACR, General Report, 2009, para. 106.

<sup>2140</sup> The importance of continual monitoring has been emphasized by the Committee in a number of cases related to discrimination based on race, colour and national extraction: *Austria* – CEACR, direct request, 2010; *Cyprus* – CEACR, direct request, 2011; *Czech Republic* – CEACR, observation, 2008; *France*, observations, 2008 and 2011; *Portugal* – CEACR, direct request, 2009; and *Serbia* – CEACR, direct request, 2010.

<sup>2141</sup> CEACR, General Report, 2009, para. 107.

<sup>2142</sup> See, for example, *Cape Verde* – CEACR, direct request, 2009; *Estonia* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2011; *Honduras* – CEACR, direct request, 2010, *Pakistan* – CEACR, observation, 2011. See also Japan: Third Basic Plan for Gender Equality, approved in December 2010 (report under art. 19 of the Constitution).

The pace has been slower in respect of the other grounds set out in *Article 1(1)(a)*. Whereas discrimination on the grounds of race, colour and national extraction, as well as religion, is generally prohibited in the national legislation of most countries, far fewer countries have adopted proactive and comprehensive measures aimed at promoting substantive equality in respect of these grounds. Generally, less emphasis has been given to assessing the actual results secured by the measures to implement these policies. The Committee recalls that, even though the relative importance of the problems relating to each of the grounds may differ for each country, when reviewing the situation and deciding on the measures to be taken, it is essential that attention be given to all the grounds in implementing the national policy. The Committee has repeatedly felt the need to remind countries of this obligation under the Convention.

### *Constitutional and legislative developments*

850. Some governments have indicated that they are in full compliance with the Convention, as equality is constitutionally guaranteed and there are no discriminatory provisions in their laws. The Committee must emphasize that a constitutional provision and the absence of discriminatory provisions in legislation, or the absence of complaints, is not sufficient to fulfil the obligations of the Convention; nor is it an indicator of the absence of discrimination in practice. While the repeal of discriminatory legislation is an immediate obligation under the Convention, it is only a first step in implementing a national equality policy.

851. Constitutional clauses which expressly provide that international agreements and treaties prevail over national law, while important, do not exempt States from adopting national legislation to implement the principles laid down in the Convention. The provisions of the Convention, even where prevailing over national law, may not be sufficient in themselves to provide effective legal protection from discrimination to individual workers.<sup>2143</sup> In addition, provisions in constitutions guaranteeing, in general terms, equality before the law, freedom of opinion, access to the public sector or the right to employment, while important, are insufficient to give effect to the Convention.<sup>2144</sup> The Committee welcomes the steps taken in recent years by a number of countries to strengthen constitutional guarantees, for example by including a positive duty of the State to promote equality between men and women,<sup>2145</sup> expanding the list of prohibited grounds of discrimination<sup>2146</sup> or including grounds previously omitted.<sup>2147</sup> Nonetheless constitutional provisions providing for equality of opportunity and treatment, although important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation.<sup>2148</sup> A more detailed legislative framework is also required.

852. Legislation is still one of the most widely used means of ensuring and promoting acceptance and observance of the national policy designed to promote equality of opportunity and treatment in employment and occupation. For most countries, legislation seems to be an indispensable step in giving effect to the principle of the Convention, and

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<sup>2143</sup> Special Survey, 1996, para. 212.

<sup>2144</sup> CEACR, General Report, 2009, para. 109; see also, for example, *Nepal* – CEACR, observation, 2008.

<sup>2145</sup> See *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Luxembourg* – CEACR, observation, 2008.

<sup>2146</sup> See *Costa Rica* – CEACR, observation, 2011; and *Rwanda* – CEACR, observation, 2006.

<sup>2147</sup> See *Botswana* – CEACR, observation, 2010.

<sup>2148</sup> CEACR, General Report, 2009, para. 109.

considerable progress has been made in this regard. In recent years, such progress has been marked by more comprehensive provisions on equality and non-discrimination in general labour laws, for example, in *Australia* and the *United Republic of Tanzania*,<sup>2149</sup> or the adoption of specific non-discrimination or equality legislation covering one or more grounds, particularly in Europe, but also for example in *Indonesia* and *Viet Nam*.<sup>2150</sup> The Committee has been encouraged by legislative initiatives in countries recognizing the need to address the more subtle and systemic manifestations of discrimination, such as occupational segregation, and to promote substantive equality. While a legal approach exclusively based on the imposition of a negative duty not to discriminate has proven effective in eliminating the most flagrant forms of direct discrimination, the Committee welcomes the adoption by a growing number of countries of legislation encompassing both a duty to prevent and combat discrimination and to promote equality of opportunity and treatment in employment and occupation.<sup>2151</sup> Such legislation may prove to be more effective in addressing structural discrimination and meeting the concerns of those most vulnerable to discrimination, who tend to make less use of the law because of a lack of awareness or a fear of reprisals. The Committee particularly welcomes the language in some legislation referring to “actual, perceived or supposed characteristics” with respect to the protected grounds.<sup>2152</sup>

853. Where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention.<sup>2153</sup> In recent years, the Committee has been able to note progress in a number of countries in this regard, for example in *Australia*, *Belgium*, *Croatia*, *Fiji*, *Kenya*, *Serbia* and *The former Yugoslav Republic of Macedonia*.<sup>2154</sup> ***In this context, the Committee draws attention to the need to review continually the protection afforded by the national legislation to ensure that it remains appropriate and effective, particularly in light of the regularly changing context and newly emerging grounds.***

854. Even in countries where the adoption of legislation has been an important means of declaring and pursuing a national policy on equality, the principles of the Convention are often only partially reflected in the legislation, which does not therefore provide full protection. On a number of occasions, the Committee has found that some of the grounds set out in *Article 1(1)(a)* of the Convention have been omitted,<sup>2155</sup> or that not all aspects of employment and occupation have been addressed, and particularly recruitment.<sup>2156</sup> Given the persisting patterns of discrimination on the grounds set out in the Convention,

<sup>2149</sup> *Australia* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2009.

<sup>2150</sup> *Indonesia* – CEACR, observation, 2011; and *Viet Nam* – CEACR, observation, 2008.

<sup>2151</sup> See below, para. 860.

<sup>2152</sup> See *Fiji* – CEACR, observation, 2008 (Employment Relations Promulgation 2007, sections 6(2) and 75).

<sup>2153</sup> General Survey, 1988, para. 171; Special Survey, 1996, para. 206.

<sup>2154</sup> *Australia* – CEACR, observation, 2011 (the Fair Work Act, 2009); *Belgium* – CEACR, observation, 2009 (Anti-discrimination Act, 2007); *Croatia* – CEACR, observation, 2011 (Anti-discrimination Act, 2008); *Fiji*, observation 2008 (Employment Relations Promulgation, 2007); *Kenya* – CEACR, observation, 2010 (Employment Act, 2007); *Serbia* – CEACR, observation, 2010 (Law on the Prohibition of Discrimination, 2009); and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009 (Labour Relations Act, 2005).

<sup>2155</sup> See *Algeria* – CEACR, observation, 2011; *Austria*, direct request, 2010; *Azerbaijan* – CEACR, observation, 2011; *Bahamas* – CEACR, direct request, 2011; *Bangladesh* – CEACR, observation, 2011; *Cameroon* – CEACR, observation, 2010; *Islamic Republic of Iran* – CEACR, observation, 2011; *Lao People’s Democratic Republic* – CEACR, direct request, 2012; and *Sweden*, direct request, 2010.

<sup>2156</sup> See *Armenia* – CEACR, direct request, 2011; *Bangladesh* – CEACR, observation, 2011; *Rwanda* – CEACR, observation, 2011; and *Saint Kitts and Nevis* – CEACR, direct request, 2010.



in most cases there is a need for comprehensive legislation containing explicit provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds set out in the Convention, and in all aspects of employment and occupation, in order to ensure the full application of the Convention.<sup>2157</sup>

855. The Committee has observed that a number of features in legislation contribute to addressing discrimination and promoting equality, and it particularly welcomes legislation containing the following: coverage of all workers; provision of a clear definition of direct and indirect discrimination, as well as sexual harassment; the prohibition of discrimination at all stages of the employment process; the explicit assignment of supervisory responsibilities to competent national authorities; the establishment of accessible dispute resolution procedures; the establishment of dissuasive sanctions and appropriate remedies; the shifting or reversing of the burden of proof; the provision of protection from retaliation; affirmative action measures; and provision for the adoption and implementation of equality policies or plans at the workplace, as well as the collection of relevant data at different levels.

### Promoting equality through proactive measures

856. *Legislative measures to give effect to the principles of the Convention are important, but not sufficient to achieve its objective.*<sup>2158</sup> *Effectively responding to the complex realities and variety of ways in which discrimination occurs requires the adoption of differentiated measures. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from discrimination deeply entrenched in traditional and societal values.*<sup>2159</sup> *The Committee welcomes the range of proactive measures taken by States to give effect to the Convention in practice.*

### National plans and strategies

857. Further advances have been made in adopting national plans and policies setting specific goals and objectives to achieve equality of opportunity and treatment, or for combating discrimination. Some of these contain comprehensive measures in the area of legislative reform, affirmative action, awareness raising and training. A large number focus on gender equality, such as in *Belarus*, *Benin*, *Costa Rica*, *Japan* and *Philippines*. Others focus specifically on race, such as the National Plan for the Promotion of Racial Equality in *Brazil*, although a growing number have wider coverage, such as the national anti-discrimination plans in *Argentina* and *Lithuania*. Some countries have adopted specific policies to promote equality in the public service. For example, in *France*, a charter for the promotion of equality in the three branches of the public service aims to establish recruitment conditions tailored to needs without discrimination, make career paths more dynamic, raise the awareness of and train employees in the administration, and disseminate good practices.<sup>2160</sup> Other countries have adopted similar policies for persons with disabilities,<sup>2161</sup> the Roma,<sup>2162</sup> ethnic minorities or persons of immigrant background.<sup>2163</sup>

<sup>2157</sup> See, for example, *Bahrain* – CEACR, observation, 2009; CEACR, General Report, 2009, para. 109.

<sup>2158</sup> See General Survey, 1988, para. 159; See also *Azerbaijan* – CEACR, observation, 2011; *Bosnia and Herzegovina* – CEACR, observation, 2003; *Sao Tome and Principe* – CEACR, direct request, 2006; and *Sierra Leone* – CEACR, observation, 2011.

<sup>2159</sup> See, for example, *Senegal* – CEACR, observation, 2006.

<sup>2160</sup> *France* – CEACR, observation, 2011.

<sup>2161</sup> See, for example, *Jamaica* – CEACR, direct request, 2010.

858. Monitoring the implementation of plans and policies in terms of results and effectiveness is essential, although very few countries have established specific reporting procedures or mechanisms to this end. The proliferation of plans and strategies, whether to promote gender equality, Roma inclusion, or to combat discrimination, has not been accompanied by regular information on the results secured by the action taken to implement them, and the Committee has regularly reminded governments of their obligation under *Article 3(f)* of the Convention in this regard. The Committee also emphasizes the important role of worker' and employers' organizations in developing and promoting the acceptance and observance of national policies and plans, as well as in evaluating their impact. The cooperation and consultation processes provided for in the Convention and Recommendation assist in ensuring that the measures enjoy wide support and that policies are effectively implemented.<sup>2164</sup>

### *Public procurement*

859. *Paragraph 3(b)(ii)* of Recommendation No. 111, specifically refers to the possibility of making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles of the Convention.<sup>2165</sup> The Committee acknowledged in previous General Surveys the importance of equality clauses in public procurement.<sup>2166</sup> Little information has been received since then regarding national law and practice in this respect, although different types of public procurement frameworks have been put in place. They consist primarily of the adoption of a general policy, mainly through a general clause aimed at respect for equality of opportunity and treatment;<sup>2167</sup> others are aimed at improving the situation of a specific group of persons who have been historically disadvantaged, or provide for gender mainstreaming in the framework of procurement procedures.<sup>2168</sup> The Preferential Procurement Policy Framework Act of *South Africa* provides for the possibility of establishing a preferential procurement policy with the specific goal of "contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability through the allocation of additional preference points when the specific goal can be attained by the tender".<sup>2169</sup> In *Canada*, a range of legislation and programmes at both the federal and provincial levels have been developed concerning public procurement and equality.<sup>2170</sup>

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<sup>2162</sup> See paras 773–775 above.

<sup>2163</sup> See, for example, *Cambodia* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Kenya* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; and *Norway* – CEACR, direct request, 2011.

<sup>2164</sup> Convention No. 111, *Arts 3(a)* and *5(2)*; Recommendation No. 111, *Para. 4(9)*.

<sup>2165</sup> See also paras 721–722 above.

<sup>2166</sup> General Survey, 1971, para. 67; General Survey, 1988, para. 177.

<sup>2167</sup> See, for example, *Australia* – CEACR, observation, 2011.

<sup>2168</sup> *Belgium* – CEACR, direct request, 2010.

<sup>2169</sup> See *South Africa*, Preferential Procurement Policy Framework Act, 2000, and the Broad-based Black Economic Empowerment Act, 2003. See also *Zambia* – CEACR, direct requests, 2011 and 2012.

<sup>2170</sup> For instance, in *Canada* the Federal Contractors Program (FCP), established in 1986, aims to achieve workplace equity for designated groups experiencing discrimination in the Canadian labour market, namely women, aboriginal peoples, persons with disabilities and members of visible minorities. Comprehensive guidance is provided through the Federal Government's website for those who are subject to the Program. See also *Canada* – CEACR, direct request, 2012, regarding the Employment Equity Compliance Reviews conducted under the FCP, resulting in 150 employees being ineligible to receive contracts. In the United States, the Small Business Act Public Law 85-536 ensures the participation of those socially and economically disadvantaged persons who

### *Equality planning*

860. Promoting equality at the enterprise level has in some countries been an important element of strategies to promote equality of opportunity and treatment in employment and occupation. In a number of countries, legislation requires certain public or private employers to adopt equality plans, equal opportunity plans or employment equity plans.<sup>2171</sup> Through such equality planning, employers can play a crucial role in collecting statistical information on the representation of different groups in the workforce, finding solutions to address existing inequalities and adopting affirmative action measures within the enterprise. Under the Equal Treatment Act in *Hungary* “[b]udgetary organizations employing more than 50 persons, as well as legal entities in which the State has a majority ownership are obliged to draw up an equal opportunities plan”. In *South Africa* legislation requiring employers to adopt employment equity plans allows them to set clear objectives and adopt affirmative action measures. With a view to assisting employers and improving compliance with the obligation to develop equality plans, codes of good practice have been developed in some countries, such as *South Africa* and *United Republic of Tanzania*.

### *Codes, tools and guides*

861. The Committee welcomes the initiatives taken in a number of countries to complement non-discrimination and equality legislation with tools and guidance, such as codes of practice, codes of conduct or guidelines, most of which have focused on a particular issue, such as sexual harassment, HIV and AIDS or persons with disabilities. In *Barbados*, the Code of practice on HIV/AIDS and other life-threatening illnesses in the workplace was developed by the social partners and the Ministry of Labour for the public service.<sup>2172</sup> In *Singapore*, tripartite guidelines were developed on non-discrimination in job advertisements, as well as tripartite guidelines on fair employment practices. In *Estonia*, the Estonian–French twinning project led to a compilation of European good practices and guidelines for employers to promote gender equality in enterprises in relation to recruitment, training and careers, pay and work–life balance. A network of employers, workers’ representatives, gender experts and other relevant actors was subsequently created with a view to exchanging information, experience and good practices in promoting gender equality in enterprises.

### *Affirmative action measures*

862. Affirmative action measures are aimed at ensuring equality of opportunity in practice, taking into account the diversity of situations of the persons concerned, so as to halt discrimination, redress the effects of past discriminatory practices and restore a balance. They are part of a broader effort to eliminate all inequalities and an important component of the national equality policy, required under *Article 2*.<sup>2173</sup> To be in accordance with the Convention, such measures must genuinely pursue the objective of equality of opportunity, be proportional to the nature and scope of the protection or

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are members of groups that have suffered discriminatory practices (Black Americans, Hispanic Americans, Native Americans, Indian tribes, Asian Pacific Americans, Native Hawaiian Organizations and other minorities) in a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government.

<sup>2171</sup> See *Finland* – CEACR, direct request, 2007; *Hungary* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; and *South Africa* – CEACR, direct request, 2010.

<sup>2172</sup> *Barbados* – CEACR, direct request, 2011.

<sup>2173</sup> At a very early stage, the Committee considered that “in suitable cases – and subject to periodic re-examination of their continued justification – these measures may in fact be considered essential elements in a policy designed to achieve true equality”, General Survey, 1963, para. 39.

assistance needed or of the existing discrimination, and be examined periodically in order to ascertain whether they are still needed and remain effective. Affirmative action grounded on prior consultation and the consent of the stakeholders, including workers' and employers' organizations, helps to ensure that the measures taken are broadly accepted, effective and in line with the principle of non-discrimination.<sup>2174</sup>

863. Affirmative action has mostly been used to address gender inequality, but also de facto inequalities in education and training, employment and occupation that affect certain ethnic or national minorities, indigenous peoples, certain social groups, persons with disabilities, older persons, and persons with HIV. Most affirmative action addressing gender equality has emerged from legislation, such as in *Brazil* and *Bulgaria*,<sup>2175</sup> and in the majority of cases is aimed at the public sector, setting quotas or targets on the representation of women. In Timor-Leste, for example, legislation provides for a mandatory gender balance in the composition of the Administrative Council of the Employment and Vocational Training Fund and the Development of the Labour Force Institute.<sup>2176</sup>

864. In *Peru*, a Directive adopted by the Ministry of the Interior provides that 25 per cent of managerial posts in the non-police state department shall be occupied by women.<sup>2177</sup> The Magna Carta of the *Philippines* states that the number of women in third-level positions in Government shall correspond to a "50–50 gender balance".<sup>2178</sup> A target of 30 per cent has been set in *Ghana* in order to ensure adequate representation of women at the district and sub-district levels of the administration.<sup>2179</sup> Other countries that have set similar targets and quotas to correct gender inequalities in representation in the public administration include *Belgium*, *Belize*, *Bulgaria*, *Cambodia*, *Cuba*, *El Salvador*, *India*, *Japan*, *Nepal* and *Pakistan*. Affirmative action measures setting goals for the representation of ethnic minorities have been adopted in *Israel*, where 10 per cent of all civil servants must come from Arab, Druze and Circassian population groups.<sup>2180</sup> The Updated Strategic Plan in *Australia* (South Australia) establishes targets to increase aboriginal workforce participation.<sup>2181</sup> *Ireland* and *Slovenia* have established quotas to ensure that employers hire a percentage of persons with disabilities at the workplace.<sup>2182</sup>

<sup>2174</sup> See, for example, *Fiji* – CEACR, direct requests, 2006, 2008 and 2011; and *Greece* – CEACR, direct request, 2003.

<sup>2175</sup> *Brazil*, Decree No. 6872 of 2009; and *Bulgaria*, Act on Protection against Discrimination.

<sup>2176</sup> Timor-Leste, Decree-Law 29/2008 on the Employment and Vocational Training Fund; Decree-Law 08/2008 on the Development of the Labour Force Institute.

<sup>2177</sup> *Peru* – CEACR, observation, 2011.

<sup>2178</sup> *Philippines* – CEACR, observation, 2011.

<sup>2179</sup> *Ghana* – CEACR, direct request, 2010.

<sup>2180</sup> *Israel* – CEACR, direct request, 2011.

<sup>2181</sup> *Australia* – CEACR, observation, 2011. With regard to affirmative action to address "racially disadvantaged groups", see *Namibia*, Affirmative Action (Employment) Act; *Namibia* – CEACR, direct request, 2005 and observations, 2010 and 2012.

<sup>2182</sup> *Ireland* – CEACR, direct request, 2011: the Civil Service holds special competitions with a view to ensuring that 3 per cent of all recruits are persons with disabilities; *Slovenia* – CEACR, direct request, 2007 (the Decree Establishing Employment Quota for Disabled Persons (No. 111/2005) requires every employer with at least 20 workers to employ a certain proportion of disabled persons).

*Awareness raising and public information*

865. During the early discussions on the Convention, a large number of countries indicated the importance they attached to educational programmes as a means of giving effect to the Convention,<sup>2183</sup> a concern which is reflected in *Article 3(b)*.<sup>2184</sup> Educational programmes are instrumental in enhancing understanding and knowledge about the legislative and policy framework on equality and non-discrimination in employment and occupation. Public awareness raising is also essential to address prejudices and stereotypes regarding the professional abilities and aspirations of certain groups which lead to exclusion and discrimination in society and the labour market.<sup>2185</sup> In a number of countries, the Committee has stressed the importance of combating xenophobia, discrimination and stereotypes by actively promoting respect and tolerance, without which the coexistence of different groups in society is illusive.<sup>2186</sup> Without respect of the rule of law and maintenance of a climate of tolerance, many de facto inequalities are left unaddressed, and the progress made at the policy level stagnates or is reversed. The special role of equality bodies in fostering public understanding and acceptance of the principles of non-discrimination is specifically recognized in the Recommendation.<sup>2187</sup>

866. Awareness-raising measures vary from one country to another. In *Belgium*, *Ecuador*, *Lesotho* and *Switzerland*, guidelines and handbooks on sexual harassment and other gender issues have been adopted.<sup>2188</sup> In *Madagascar* and *Mexico*, workshops, training or campaigns have covered sexual harassment, equal remuneration and occupational segregation, and in *Mozambique*, programmes to mobilize various sectors to address HIV and AIDS included training of 25 educators and awareness raising for 16,000 informal sector vendors.<sup>2189</sup> In the *Republic of Moldova*, the National Employment Agency disseminates information on national policies and legislation concerning equal opportunities and treatment.<sup>2190</sup> Some countries have involved the media in raising awareness on discrimination issues and promoting equality, such as *Burundi* and *Kuwait*.<sup>2191</sup> *Norway* adopted the project “Top 10 International Women”, aiming to increase awareness and promote recognition of the competence and skills of immigrant women.<sup>2192</sup>

<sup>2183</sup> See *Discrimination in the field of employment and occupation*, Report VII(2), ILC, 40th Session, Geneva, 1957, pp. 81–83.

<sup>2184</sup> Art. 3(b) provides for the promotion of “... such educational programmes as may be calculated to secure the acceptance and observance” of the national equality policy.

<sup>2185</sup> See, for example, *Belarus* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2011; *Croatia* – CEACR, observation, 2010; *Dominican Republic* – CEACR, observation, 2011; *Eritrea* – CEACR, direct request, 2011; *Guatemala* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, direct request, 2009; *Kenya* – CEACR, direct request, 2009; *New Zealand* – CEACR, direct request, 2010; *Papua New Guinea* – CEACR, direct request, 2011; and *Senegal* – CEACR, observation, 2009.

<sup>2186</sup> See, for example, *France* – CEACR, observation, 2011; *Islamic Republic of Iran* – CEACR, observation, 2011; *Libya* – CEACR, observation, 2010; and *Slovakia* – CEACR, observation, 2008.

<sup>2187</sup> Para. 4(a). See also Chapter 4.

<sup>2188</sup> *Belgium* – CEACR, direct request, 2011; *Ecuador* – CEACR, direct request, 2010; *Lesotho* – CEACR, direct request, 2011; and *Switzerland* – CEACR, direct request, 2012.

<sup>2189</sup> *Madagascar* – CEACR, direct request, 2011; *Mexico* – CEACR, direct requests, 2009 and 2011; and *Mozambique* – CEACR, direct request, 2011.

<sup>2190</sup> Report under art. 19 of the ILO Constitution.

<sup>2191</sup> *Burundi* – CEACR, direct request, 2011; and *Kuwait* – CEACR, direct request, 2009.

<sup>2192</sup> *Norway* – CEACR, direct request, 2010.

867. Awareness raising aimed at, or in cooperation with, workers and employers and their organizations generates broader understanding of the principles enshrined in the Convention. In *Bulgaria*, the Commission on the Protection against Discrimination has collaborated with the national workers' and employers' organizations and signed framework agreements on cooperation for the prevention of discrimination in the field of labour with the trade union confederation and the agency for persons with disabilities.<sup>2193</sup> In *Finland*, the national awareness-raising campaign "YES – Equality is priority" focuses on new forms of positive action to be developed and tested in the area of employment and entrepreneurship.<sup>2194</sup>

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<sup>2193</sup> *Bulgaria* – CEACR, observation, 2009.

<sup>2194</sup> *Finland* – CEACR, direct request, 2011.

## Chapter 4

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### Monitoring and enforcement relating to Conventions Nos 100 and 111

868. Monitoring and enforcement of equality and anti-discrimination laws and policies is an important aspect in determining if there is effective implementation of Conventions Nos 100 and 111. Adequately resourced and responsive procedures and institutions, which are accessible to all groups, are critical in this context. A number of countries have acknowledged the need to strengthen monitoring and enforcement mechanisms, including the labour inspectorate, specialized equality or equal pay bodies and the courts, in order to better address non-discrimination and equality in employment and occupation. The role of the labour inspectorate and specialized equality bodies has been a particular focus of the Committee in recent years given the developments in those areas.

869. Another important aspect of monitoring implementation of the Conventions is the collection and analysis of statistics. In order to be able to address appropriately discrimination and unequal pay, and to determine if measures taken are having a positive impact, data and research on the actual situation, including the underlying causes, are essential, and the Committee regularly calls on governments to provide such information and analysis.

870. The Committee also regularly requests governments to provide detailed information on the nature and number of complaints lodged with the various judicial, quasi-judicial and administrative bodies. Where no cases or complaints, or very few, are being lodged, this is likely to indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals.<sup>2195</sup> The fear of reprisals or victimization is a particular concern in the case of migrant workers.<sup>2196</sup> The lack of complaints or cases could also indicate that the system of recording violations is insufficiently developed.

***871. The Committee invites member States to raise awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of discrimination and unequal pay, and also to examine whether the applicable substantive and procedural provisions, in practice, allow claims to be brought***

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<sup>2195</sup> CEACR, General Report, 2009, para. 113. See also Convention No. 100: *Morocco* – CEACR, observation, 2009; *Bangladesh* – CEACR, observation, 2011; *Estonia* – CEACR, direct request, 2011; *Indonesia* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2011.

<sup>2196</sup> See, for example, Convention No. 111: *Syrian Arab Republic* – CEACR, direct request, 2011. With respect to migrant domestic workers, see *Bahrain* – CEACR, observation, 2010 and *Saudi Arabia* – CEACR, observation, 2009.

successfully.<sup>2197</sup> *The Committee also stresses the need to collect and publish information on the nature and outcome of discrimination and equal remuneration complaints and cases, as a means of raising awareness of the legislation and of the avenues for dispute resolution, and in order to examine the effectiveness of the procedures and mechanisms.*<sup>2198</sup>

## The labour inspectorate

872. Where provisions on non-discrimination, equality and equal remuneration are set out in labour laws, the supervision of the relevant provisions often rests in the first instance with the labour inspection services.<sup>2199</sup> Their role normally includes detecting and addressing violations during inspection visits, reporting such violations and imposing sanctions. They may also be given an important role in prevention, including providing technical information and advice.<sup>2200</sup> There is evidence of an emerging role for labour inspectors in monitoring equality and diversity in the workplace, and increased interaction with specialized equality bodies.<sup>2201</sup>

873. Measures to increase the role of the labour inspection services to address equality and non-discrimination have been taken, for example in *Poland*, where equal treatment of non-citizens recently became an additional component of the supervision of the labour legislation by the labour inspectorate.<sup>2202</sup> Given the importance of minimum wages in the context of equal remuneration and improving the wages of low-paid workers,<sup>2203</sup> enforcing the payment of minimum wages can also be significant.<sup>2204</sup> As previously mentioned, some countries have adopted specific legislation requiring the development and implementation by employers of plans to prevent discrimination and promote equality.<sup>2205</sup> In *South Africa*, the Labour Department is responsible for monitoring the adoption and implementation of these plans.<sup>2206</sup>

874. Many governments continue to face difficulties in establishing and maintaining adequate labour inspection services to carry out their monitoring duties.<sup>2207</sup> The lack of human and material resources has an impact on the capacity of labour inspectors to address discrimination and equal remuneration issues. In most cases, labour inspectors may be able to intervene and provide guidance and redress only on the basis of individual complaints rather than on a more systematic and comprehensive basis during

<sup>2197</sup> CEACR, General Report, 2009, para. 113. See also CEACR, general observation, 2007, para. 8. See also Convention No. 111: *Islamic Republic of Iran* – CEACR, observation, 2011; *Saudi Arabia* – CEACR, observation, 2007.

<sup>2198</sup> CEACR, General Report, 2009, *ibid.*

<sup>2199</sup> For example in *Belgium, Bulgaria, Chile, Denmark, France, Lebanon*, and in most French-speaking countries of Africa and most countries in Latin America.

<sup>2200</sup> General Survey, 2006, para. 85.

<sup>2201</sup> *ibid.*, p. 54; see section on specialized bodies, paras 877–882.

<sup>2202</sup> See Convention No. 111: *Poland* – CEACR, direct request, 2011. See also *Saint Lucia* – CEACR, direct request, 2011; *Slovakia* – CEACR, direct request, 2010; and *Slovenia* – CEACR, direct request, 2010.

<sup>2203</sup> See paras 682–685 above.

<sup>2204</sup> See, for example, *Guatemala* – CEACR, direct request, 2007 (Convention No. 100).

<sup>2205</sup> See paras 723–724, 860.

<sup>2206</sup> See also *United Republic of Tanzania* – CEACR, observation, 2010 (Convention No. 111).

<sup>2207</sup> General Survey, 1986, paras 104 and 224; General Survey, 1988, para. 193; General Survey, 2006, para. 370.



regular inspections at the workplace. In some countries, however, such as *Mexico*,<sup>2208</sup> the means at the disposal of labour inspection services in charge of reporting discriminatory practices and violence in the workplace have been reinforced.<sup>2209</sup> In other countries, special units have been created within the labour inspectorate, such as in *El Salvador*.<sup>2210</sup> In order to assess the effective application of Conventions Nos 100 and 111, the Committee requests governments to provide detailed information on the inspections conducted, the number and type of violations reported or detected, action taken and the outcome thereof.<sup>2211</sup>

875. Some governments point out the difficulties faced by labour inspectors in identifying cases of discrimination, in particular cases of pay discrimination, or of determining whether equal remuneration is being provided for work of equal value, particularly where men and women do not perform the same work.<sup>2212</sup> The Committee recalls the importance of training labour inspectors to increase their capacity to prevent, detect and remedy such instances<sup>2213</sup> and requests governments to implement adequate training programmes.<sup>2214</sup> Recent positive developments with respect to training in this area were noted in a number of countries, including *Guinea-Bissau*, *Honduras*, *Mauritius* and *Yemen*.<sup>2215</sup> In *Spain*, the National Plan of Action on the Inspectorate for Labour and Social Security highlights the importance of the proper handling of complaints for failure to provide equal remuneration.<sup>2216</sup>

876. The Committee welcomes the growing number of initiatives to provide labour inspectors with guidance and instructions. In *Costa Rica*, a ministerial directive on the treatment of discrimination cases was issued to the National Labour Inspection Department.<sup>2217</sup> In the *Czech Republic*, an instruction for labour inspectors was issued, explaining the legal provisions on gender equality in force and providing practical guidance to labour inspectors on how to conduct equality inspections, as well as detailed methodological instructions for inspections regarding determining equal remuneration through an analytical method for assessing work value.<sup>2218</sup> Discrimination and equality

<sup>2208</sup> *Mexico* – CEACR, direct request, 2011 (Convention No. 111).

<sup>2209</sup> See also *Slovenia* – CEACR, direct request, 2011 (Convention No. 100).

<sup>2210</sup> Convention No. 111: *El Salvador* – CEACR, direct requests, 2009 and 2011. See also *Republic of Moldova* – CEACR, direct request, 2011.

<sup>2211</sup> See, for example, Convention No. 111: *Albania* – CEACR, direct request, 2011; Convention No. 100: *Lesotho* – CEACR, direct request, 2011; and *Turkmenistan* – CEACR, direct request, 2011.

<sup>2212</sup> See, for example, *Mali* – CEACR, direct request, 2011 (Convention No. 100).

<sup>2213</sup> See, for example, *Saint Vincent and the Grenadines* – CEACR, direct request, 2011 (Convention No. 100).

<sup>2214</sup> See, for example, Convention No. 100: *Malawi* – CEACR, direct request, 2011; *Malaysia* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2011.

<sup>2215</sup> See *Guinea-Bissau* – CEACR, direct request, 2011 (Convention No. 100); *Honduras* – CEACR, observation, 2009 (Convention No. 81); *Mauritius* – CEACR, direct request, 2009 (Convention No. 100); and *Yemen* – CEACR, direct request, 2011 (Convention No. 111) where a project includes training of male and female officials of the Labour Inspection Directorate to conduct more gender-responsive labour inspections.

<sup>2216</sup> *Spain* – CEACR, direct request, 2005 (Convention No. 100).

<sup>2217</sup> *Costa Rica* – CEACR, direct request, 2004 (Convention No. 111). See also *China (Macau Special Administrative Region)* – CEACR, direct request, 2011 (Convention No. 100) regarding the adoption of guidance on equal remuneration for work of equal value issued by the Labour Inspection Department.

<sup>2218</sup> *Czech Republic* – CEACR, observation, 2005 (Convention No. 111), and observation, 2007 (Convention No. 100). See also *Cyprus* – CEACR, direct request, 2011 (Convention No. 100) regarding a project on reducing the gender pay gap, including through the establishment of an effective inspection mechanism and the preparation of guides and tools.

issues have also been addressed through targeted inspection campaigns or plans, as in *France* and *Mongolia*.<sup>2219</sup>

## Specialized bodies

877. With a view to better addressing discrimination and promoting equality, the trend noted in previous general surveys of establishing specialized bodies has continued,<sup>2220</sup> and recently, some of these bodies have been restructured. These bodies have a diversity of mandates, in terms of the scope of their activities – from promotional/advisory to investigatory/decision-making – and in terms of the subjects they can address. The broad functions of these bodies are representative of the wide range of strategies that are needed to combat discrimination and promote equality. The role of specialized bodies in awareness raising and dealing with complaints is foreseen in Recommendation No. 111.<sup>2221</sup>

878. A wide range of awareness-raising and promotional activities are undertaken by these bodies, including conducting studies, organizing promotional campaigns and offering assistance and training to workers and employers and their organizations. For example, in *Namibia*, the Employment Equity Commission carried out an impact assessment study, and as a result provided assistance to, and training for, employers to strengthen affirmative action at the enterprise level.<sup>2222</sup> A large amount of information and a number of tools are disseminated by specialized bodies, often through their websites.<sup>2223</sup> The role of specialized equality bodies in analysing and advising on legislation, policies and plans of action is also important given their particular expertise in non-discrimination and equality issues.<sup>2224</sup>

879. Many specialized bodies have a specific function in the dispute resolution process, including examining complaints. In particular, the responsibility for enforcing anti-discrimination and equality legislation, and investigating complaints often lies with specialized equality bodies, which may themselves be established through the legislation.<sup>2225</sup> In *Norway*, for example, the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal have the authority to make recommendations and give rulings with respect to decisions by, or general practices of, governmental and state institutions, including regarding laws that might contravene equality and anti-discrimination legislation. The Ombud has the competence to investigate alleged non-compliance with the law and make recommendations, which can

<sup>2219</sup> Convention No. 111: *France* – CEACR, direct request, 2011; and *Mongolia* – CEACR, direct request, 2011.

<sup>2220</sup> General Survey, 1988, para. 197 et al.; General Survey, 1996, para. 225 et al.

<sup>2221</sup> *Para. 4.*

<sup>2222</sup> *Namibia* – CEACR, observation, 2008 (Convention No. 111).

<sup>2223</sup> See, for example, *Argentina* – CEACR, direct request, 2011 (Convention No. 100) regarding the Tripartite Commission on Equality of Opportunity and Treatment.

<sup>2224</sup> See, for example, Convention No. 100: *Honduras* – CEACR, direct request, 2006 and *Panama* – CEACR, direct request, 2010, regarding the role of the National Institute for Women (INAM) and the Women's Institute, respectively.

<sup>2225</sup> See, for example, Convention No. 111: the Ethnic Relations Commission in *Guyana* – CEACR, direct request, 2011 and the Equality and Anti-Discrimination Ombud in *Norway* – CEACR, direct request, 2009. See also *Brazil* – CEACR, direct request, 2010, regarding the establishment of the Commission for Equal Opportunities on the basis of Gender, Race, Ethnic Origin and for Persons with Disabilities and to Combat Discrimination (Order No. 219 of 7 May 2008). Such bodies have also been established through collective agreement, such as in *Argentina* – CEACR, direct request, 2009 (Convention No. 100).

be appealed before the Tribunal. The rulings of the Tribunal are administratively binding but may be overruled by a court of law.<sup>2226</sup>

880. In terms of subject matter, there are a large number of specialized bodies addressing discrimination based on sex, and promoting gender equality.<sup>2227</sup> A number of countries have also established specialized bodies to address discrimination based on race, colour or national extraction,<sup>2228</sup> or, as in the case of *Indonesia*, have given the National Human Rights Commission a central role in that regard.<sup>2229</sup> In a number of recent cases, equality bodies have had an important role specifically in addressing equal remuneration for men and women, including the development and implementation of job evaluation methods. In *Malta*, for example, the National Commission for the Promotion of Equality recommended the adoption by the Government of specific measures “seeking to establish a system of job evaluation which enables the objective appraisal of jobs with special attention to reduce the wage gap between male- and female-dominated sectors of employment” and “establishing a national system of job classification that would make it possible to compare work of equal value even across different occupational sectors”.<sup>2230</sup> In *Sweden*, the recently established Office of the Equality Ombudsman has responsibility for supervising pay surveys, which are required under the Discrimination Act, to determine if there are unjustified wage differentials. Bodies dealing uniquely with equal pay issues have also been established, though these are less prevalent.<sup>2231</sup>

881. Specialized bodies are increasingly dealing with an expanded range of issues. Some equality bodies dealing with specific grounds have in recent years been merged to address a wider range of grounds of discrimination, potentially allowing one body to address cases of discrimination based on more than one ground, or on grounds that are difficult to disentangle, thus addressing systemic and multiple discrimination.<sup>2232</sup> For example, the Equality and Anti-Discrimination Ombud of *Norway* was established through the merging of the Equality Ombud, the Equality Centre and the Centre against Ethnic Discrimination, and the Office of the Equality Ombudsman in *Sweden* was formed through the merger of four previous anti-discrimination bodies into a single body. The Equality and Human Rights Commission in the *United Kingdom* brings together the mandates of three previous equality commissions, with the new Commission addressing discrimination based on age, disability, gender including gender reassignment, race,

<sup>2226</sup> *Norway* – CEACR, direct request, 2008 (Convention No. 111).

<sup>2227</sup> For example: *Algeria*, the National Council for the Family and Women; *Austria*, the Ombud for Equal Treatment between women and men in employment and occupation; *Belgium*, the Institute for Equality of Women and Men; *Bosnia and Herzegovina*, the Gender Equality Agency; *Chile*, National Service for Women; *Ecuador*, National Gender Equality Council; *Estonia*, Gender Equality and Equal Treatment Commissioner; *Honduras*, National Institute for Women; *Israel*, the Authority for the Advancing of Women; *Jamaica*, the Bureau of Women’s Affairs; *Mali*, the National Bureau for the Promotion of Women; *Mexico*, National Institute of Women; *Panama*, the Women’s Institute; and *South Africa*, Commission of Gender Equality.

<sup>2228</sup> For example: *Argentina*, National Institute against Discrimination, Xenophobia and Racism; *Belgium*, the Centre for Equal Opportunities and the Fight against Racism; *Italy*, Office for the Promotion of Equality of Treatment and Elimination of Discrimination based on Race and Ethnic Origin; *Spain*, the Observatory on Racism and Xenophobia; and *Uruguay*, Commission to Promote Ethnic–Racial Equity in Employment.

<sup>2229</sup> *Indonesia* – CEACR, observation, 2011 (Convention No. 111): (the National Human Rights Commission (Komnas HAM)).

<sup>2230</sup> *Malta* – CEACR, direct request, 2011 (Convention No. 100).

<sup>2231</sup> Convention No. 100: *Canada* – CEACR, direct request, 2009 (Quebec Pay Equity Commission); and *Norway* – CEACR, direct request, 2007 (Equal Pay Commission).

<sup>2232</sup> See para. 748 above.

religion and belief, and sexual orientation.<sup>2233</sup> With the consolidation of bodies, however, it needs to be ensured that the new body has the necessary means and resources, both human and financial, to undertake its expanded mandate, and respond effectively to issues related to discrimination in employment and occupation, and promote equality.<sup>2234</sup>

882. The importance of coordination between specialized equality bodies and labour inspectorates has been stressed in previous General Surveys,<sup>2235</sup> and progress has recently been made in this regard. In *Spain*, for example, a protocol of cooperation was signed between the Ministry for Equality and the labour inspectorate for monitoring situations involving wage discrimination and reducing the wage gap. Under this protocol, the labour inspectorate carries out controls, the results of which are communicated to the Ministry for Equality, which analyses the existing wage gap and the sectors in which this is most pronounced.<sup>2236</sup> In *Belgium*, the collaboration between the Centre for Equal Opportunities and the Fight against Racism and the labour inspectorate was strengthened, resulting in a greater number of inspections of employment agencies and temporary work agencies, and has led to the identification of cases of discrimination based on ethnic origin, race and colour.<sup>2237</sup> In *France*, the former High Authority to Combat Discrimination and Promote Equality (HALDE), which became part of the Defender of Rights in 2011, collaborates closely with the labour inspectorate to exchange information and documents, provide each other with advice, and investigate jointly discrimination cases at work.<sup>2238</sup>

## Courts and tribunals

883. The judicial process of individual complaints to courts or labour tribunals, including providing appropriate remedies and imposing sanctions, remains a common feature in the enforcement of anti-discrimination and equal remuneration provisions. Courts and tribunals have an important role in developing jurisprudence furthering the principles of Conventions Nos 100 and 111, and in providing remedies including orders for equal remuneration, compensation and reinstatement. Particular decisions of courts and tribunals in relation to the Conventions have been addressed in Chapters 2 and 3.<sup>2239</sup>

<sup>2233</sup> See also *Denmark* – CEACR, direct request, 2011 (Convention No. 111) noting that the Board of Equal Treatment became operational in 2009, replacing the Board on Gender Equality and the Ethnic Equality Board. It can receive complaints regarding discrimination on the grounds of gender, race, colour, religion or belief, political opinion, sexual orientation, age, disability, or national, social or ethnic origin.

<sup>2234</sup> See, for example, *France* – CEACR, direct request, 2011 (Convention No. 111).

<sup>2235</sup> General Survey, 1986, para. 258; General Survey, 1988, para. 194.

<sup>2236</sup> *Spain* – CEACR, direct request, 2011 (Convention No. 100).

<sup>2237</sup> *Belgium* – CEACR, direct request, 2011 (Convention No. 111).

<sup>2238</sup> See also Convention No. 111: *France* – CEACR, direct request, 2011; *Australia* – CEACR, direct request, 2011 regarding the establishment of the Fair Work Ombudsman who can engage the Fair Work Inspectors.

<sup>2239</sup> For example, with respect to the role of the courts in the context of equal remuneration for work of equal value, see para. 678 above. In the context of Convention No. 111, courts and tribunals have addressed a wide range of issues, including indirect discrimination (para. 746), racial discrimination (para. 773), migrant workers (para. 778), sexual harassment (para. 793), political opinion (para. 805), HIV status (paras 810 and 812), age (para. 813), sexual orientation (para. 824) and state security (para. 834).

## Access to procedures and remedies

884. The accessibility of all groups to the various mechanisms addressing discrimination and equal pay remains a challenge, and issues such as cost, delays, representation and standing, the burden of proof, and fear of victimization are often raised as obstacles.<sup>2240</sup> The issue of lack of physical access has also been raised, where, for example, dispute resolution bodies are available only in the capital city, as well as lack of access in practice, where the groups subject to discrimination are not represented on the adjudication body, thus they may not have confidence in the system.<sup>2241</sup> As many of the concerns related to accessibility have been associated historically with formal judicial proceedings based on individual complaints, they have in part stimulated the rise in specialized bodies.

885. The burden of proof can be a significant obstacle, particularly as much of the information needed in cases related to equality and non-discrimination is in the hands of the employer. The Committee welcomes the progress in a number of countries in amending legislation to provide for the shifting of the burden of proof to the employer in discrimination and equal remuneration cases, normally once the complainant has produced prima facie or plausible evidence of a violation. The Committee considers that this is a useful means of correcting a situation that could otherwise result in inequality.<sup>2242</sup> A number of countries, based on the requirement in European directives for shifting the burden of the proof in discrimination cases, have adopted such provisions.<sup>2243</sup> In *Kenya*, the Employment Act provides for the shifting of the burden of proof to the employer in the case of an alleged violation of the provisions on non-discrimination, which incorporates the right to equal remuneration for work of equal value.<sup>2244</sup> Pursuant to the Civil Rights Act, in the United States, the Equal Employment Opportunity Commission receives and investigates complaints of discrimination, and where an investigation reveals reasonable cause to believe that a complaint is true, the Commission uses informal methods of conference, conciliation and persuasion to eliminate the unlawful employment practice, and in the absence of a settlement, the matter can be brought before the courts, either by the Commission or by the complainant.<sup>2245</sup>

886. Fear of victimization, both for complainants and witnesses, is also often raised as a concern in the effective enforcement of the principles of the Conventions. Effective protection against reprisals for those who lodge complaints or bring cases, and for witnesses, is essential for the implementation and enforcement of the principles of the

<sup>2240</sup> General Survey, 1988, paras 223–226. See also Special Survey, 1996, paras 230–234.

<sup>2241</sup> See, for example, *Saudi Arabia* – CEACR, observation, 2007 (Convention No. 111).

<sup>2242</sup> Special Survey, 1996, para. 231.

<sup>2243</sup> Directive 2000/43/EC (art. 8) and Directive 2006/54/EC (art. 19): where a person establishes facts from which it may be presumed that there has been direct or indirect discrimination, the burden shifts to the respondent to prove that there had been no breach in the principle of equal treatment. See also, for example, *Cyprus* – CEACR, observation, 2011 (Convention No. 100).

<sup>2244</sup> Convention No. 111: *Kenya* – CEACR, observation, 2010. See also: *Belgium* – CEACR, observation, 2009; *Chile* – CEACR, observation, 2009; *Cyprus* – CEACR, direct request, 2011; *Denmark* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Lithuania* – CEACR, observation, 2010; *Luxembourg* – CEACR, observation, 2008; *Norway* – CEACR, observation, 2008; *Poland* – CEACR, observation, 2006; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009.

<sup>2245</sup> In its report under art. 19 of the ILO Constitution, the United States Government refers to the Civil Rights Act, Title VII, section 706.

Conventions, and governments are urged to ensure that such protection is provided.<sup>2246</sup> The Committee notes the recent progress made in a number of countries in reinforcing legislative protection against victimization provided to those bringing cases of violations of non-discrimination and equal remuneration provisions, including in *Cyprus*, *France*, *Luxembourg*, *Malta*, *Romania*, and *Slovakia*, as well as in *Madagascar* where protection of witnesses to sexual harassment is also specifically provided.<sup>2247</sup> The importance of adequate remedies and sanctions has been stressed regularly by the Committee, including providing for reinstatement.<sup>2248</sup> In the context of protection against victimization, where someone has been dismissed due to raising a complaint, reinstatement is normally the most appropriate remedy.<sup>2249</sup> Allowing trade unions to bring complaints is also important as it reduces the risk of reprisals and is also likely to serve as a deterrent to discriminatory action.<sup>2250</sup>

## Statistics

887. While substantial information is often provided on the various measures taken to promote equality and fight against discrimination, the Committee, guided by criteria of effectiveness, is often obliged to request or urge governments to supply information on the actual impact of these measures, taking into account the national conditions and practice of the country concerned. There is indeed a significant disparity in the type and extent of information, including statistical data, supplied by governments. The availability of reliable data to measure discrimination, including unequal remuneration, depends to some extent on the resources allocated for the collection and the analysis of statistical data in general and varies from country to country.<sup>2251</sup> Initiatives are being taken at the national level to create, develop and maintain a statistical data collection and recording system.<sup>2252</sup> The Committee also examines labour market surveys or labour force surveys that are prepared on a regular basis in some countries.<sup>2253</sup>

888. An analysis of the position and pay of men and women in all job categories, within and between sectors, is required to address fully the continuing remuneration gap between men and women, yet there continues to be a lack of collection of appropriate statistics which are needed in order to undertake an assessment of the nature and extent of the pay gap.<sup>2254</sup> Noting the lack of data, the Committee has indicated the manner in

<sup>2246</sup> See, for example, Convention No. 111: *Brazil* – CEACR, observation, 2004; *Costa Rica* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2010; *Hungary* – CEACR, direct request, 2011; and *Netherlands* – CEACR, direct request, 2002.

<sup>2247</sup> Convention No. 100: *Cyprus* – CEACR, observation 2011; *Malta* – CEACR, observation, 2005. Convention No. 111: *Cyprus* – CEACR, observation, 2007; *France* – CEACR, observation, 2011; *Luxembourg* – CEACR, observation, 2008; *Madagascar* – CEACR, direct request, 2006; *Malta* – CEACR, direct request, 2007; *Romania* – CEACR, observation, 2008; and *Slovakia* – CEACR, observation, 2006.

<sup>2248</sup> Special Survey, 1996, para. 233; General Survey, 1988, paras 226–230.

<sup>2249</sup> General Survey, 1988, para. 226. Recent legislation has been adopted in *Luxembourg* in this context: CEACR, observation, 2008, Convention No. 111.

<sup>2250</sup> General Survey, 1988, para. 220.

<sup>2251</sup> See, for example, *Guinea* – CEACR, direct request, 2011 (Convention No. 111).

<sup>2252</sup> See, for example, Convention No. 111: *Liberia* – CEACR, direct request, 2011; and *Rwanda* – CEACR, direct request, 2011.

<sup>2253</sup> See, for example, *Algeria* – CEACR, direct request, 2011 (Convention No. 111).

<sup>2254</sup> CEACR, General Report, 2001, para. 46. For example, the National Congress of Thai Labour indicates that there is no data collection on income disparity in *Thailand* (report under art. 19 of the Constitution).

which statistics should be collected in order to undertake such an assessment. Governments have been urged to analyse the national situation in order to determine the nature and extent of the pay gap, by sector if possible, as a starting point in addressing equal remuneration for work of equal value.<sup>2255</sup> The Committee recalls its general observation, providing specific guidance on the type of statistics, disaggregated by sex, which should be provided, and urges governments to provide such information in its reports under article 22 of the Constitution, or if such information is not yet available, to supply all the information that is currently available to them and to continue to work towards the compilation of full statistical information.

#### **General observation concerning Convention No. 100**

In order to assist the Committee in evaluating the application of the principle of equal remuneration, and in accordance with the provisions of the Labour Statistics Convention, 1985 (No. 160), the Committee asks the governments to provide the fullest possible statistical information, disaggregated by sex, in their reports, with regard to the following:

- (i) the distribution of men and women in the public sector, the federal and/or state civil service, and in the private sector by earnings' levels and hours of work (defined as hours actually worked or hours paid for), classified by: (1) branch of economic activity; (2) occupation or occupational group or level of education/qualification; (3) seniority; (4) age group; (5) number of hours actually worked or paid for; and, where relevant, by (6) size of enterprise and (7) geographical area; and
- (ii) statistical data on the composition of earnings (indicating the nature of earnings, such as basic, ordinary or minimum wage or salary, premium pay for overtime and shift differentials, allowances, bonuses and gratuities, and remuneration for time not worked) and hours of work (defined as hours actually worked or paid for), classified according to the same variables as the distribution of employees (subparagraphs (1)–(7) of paragraph (i) above).

Where feasible, statistics on average earnings should be compiled according to hours actually worked or paid for, with an indication of the concept of hours of work used. Where earnings data are compiled on a different basis (e.g. earnings per week or per month), the statistics on the average number of hours of work should refer to the same time period (that is, by week or by month).<sup>1</sup>

<sup>1</sup> CEACR, 1999, pp. 354–355.

889. As occupational gender segregation is an issue of considerable relevance to the implementation of Conventions Nos 100 and 111,<sup>2256</sup> the Committee regularly calls on governments to provide information and analysis, including statistical data, disaggregated by sex, regarding participation in education, vocational training, and in the various sectors and occupations in the public and private sectors, and where possible, also in the informal economy.<sup>2257</sup> With a view to addressing discrimination based on race, colour and national extraction, and assessing the results of measures taken, the Committee also regularly requests information, disaggregated by sex, on the labour market situation of particular groups, including migrant workers, the Roma, and indigenous and tribal peoples. While overall there remains a lack of employment-related data going beyond those disaggregated by sex, the Committee has received statistical information, for example, from *Peru* on the labour market situation of indigenous peoples, in the public and private sectors, from *Croatia* regarding the Roma, and from

<sup>2255</sup> CEACR, General Report, 2001, para. 46.

<sup>2256</sup> See paras 712–719 above.

<sup>2257</sup> See, for example, *Chad* – CEACR, observation, 2010 (Convention No. 111).

Norway by sex and origin, indicating a difference in employment rates between male and female immigrants.<sup>2258</sup>

890. Positive developments have been noted by the Committee, in particular with respect to the preparation by ministries or governmental institutions of specific reports, studies or surveys that may be made in collaboration with statistics institutes. For instance, in *Belgium*, the annual reports on “the wage gap between men and women” now include data disaggregated by nationality.<sup>2259</sup> The social partners can also play an important role in collecting and analysing the relevant statistics. In *Iceland*, the employers’ and workers’ confederations concluded a protocol to collective agreements, providing for the establishment of a statistical study concerning gender inequalities in relation to wages. In *Denmark*, the social partners assist their membership in understanding equal pay statistics and making them operational and applicable.<sup>2260</sup>

891. While some countries have put in place laws, policies and procedures that allow for the collection of appropriate sex-disaggregated statistical data,<sup>2261</sup> globally such data is available only to a limited extent, and data on ethnic or other social groups is even less prevalent.<sup>2262</sup> Appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination and unequal remuneration, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and make any necessary adjustments. The Committee, therefore, calls on all governments to collect and analyse relevant data, including comparable statistics to enable an accurate assessment of changes over time.

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<sup>2258</sup> Convention No. 111: *Croatia* – CEACR, observation, 2011; *Norway* – CEACR, direct request, 2009; and *Peru* – CEACR, direct request, 2011.

<sup>2259</sup> *Belgium* – CEACR, direct request, 2011 (Convention No. 100). See also Convention No. 111: *Argentina* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Indonesia* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; *Togo* – CEACR, direct request, 2011; *Uzbekistan* – CEACR, direct request, 2011; and also Convention No. 100: *Hungary* – CEACR, direct request, 2011; and *Peru* – CEACR, observation, 2011.

<sup>2260</sup> Convention No. 111: *Iceland* – CEACR, direct request, 2011; and *Denmark* – CEACR, direct request, 2011, Convention No.100.

<sup>2261</sup> CEACR, General Report, 2009, para. 118. See, for example, Convention No. 111: *Bosnia and Herzegovina* – CEACR, direct request, 2006; and *Denmark* – CEACR, direct request, 2011.

<sup>2262</sup> Some countries indicate that data regarding ethnic or racial origin is difficult to collect due to data protection legislation: see, for example, Convention No. 111: *Austria* – CEACR, direct request, 2010; and *Czech Republic* – CEACR, observation, 2009.



## Part VI. Obstacles to ratification and technical assistance <sup>2263</sup>

### Chapter 1

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#### Freedom of association and collective bargaining

##### Obstacles to ratification and future prospects

892. The Committee notes with satisfaction that since the publication of its General Survey in 1994, Convention No. 87 has been ratified by 41 member States <sup>2264</sup> and Convention No. 98 by 36 member States. <sup>2265</sup> This brings the total number of ratifications of Convention No. 87 to 150 and that of Convention No. 98 to 160. <sup>2266</sup> The Committee notes that several countries state that they are not in a position to ratify the Conventions, citing various difficulties or do not take up any position on the question of ratification. Some countries state the provisions of the Conventions will be considered at a later date, in some cases with the assistance of a body set up for that purpose, while others point out more generally that their legislation is, on the whole, compatible with the Conventions or adequately governs the rights of workers' and employers' organizations. The Committee nevertheless continues to observe with concern that several of the countries with the highest percentage of the world population still have not ratified these fundamental and enabling Conventions and encourages them to vigorously pursue efforts to this end.

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<sup>2263</sup> The information contained in this part is based on the reports due under art. 19 of the Constitution, the document *Ratification and promotion of fundamental and governance ILO Conventions* (GB.310/LILS/5(&Add.)) and the information submitted by governments in the framework of the country baselines under the ILO Declaration Annual Review (2000–11).

<sup>2264</sup> Angola, Armenia, Bahamas, Botswana, Cambodia, Cape Verde, Chile, Democratic Republic of the Congo, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Gambia, Georgia, Grenada, Indonesia, Kazakhstan, Kiribati, Libyan Arab Jamahiriya, Lithuania, Malawi, Mauritius, Montenegro, Mozambique, Namibia, Papua New Guinea, Republic of Moldova, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Serbia, South Africa, Sri Lanka, United Republic of Tanzania, Timor-Leste, Turkmenistan, Uganda, Vanuatu, Zambia, Zimbabwe.

<sup>2265</sup> Armenia, Botswana, Burundi, Cambodia, Chile, Congo, El Salvador, Eritrea, Estonia, Equatorial Guinea, Gambia, Kazakhstan, Kiribati, Kuwait, Lithuania, Madagascar, Mauritania, Republic of Moldova, Montenegro, Mozambique, Namibia, Nepal, New Zealand, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, South Africa, Suriname, Switzerland, Timor-Leste, Turkmenistan, Vanuatu, Zambia, Zimbabwe.

<sup>2266</sup> As of 22 June 2011.

893. The Government of *Afghanistan* indicates that ILO technical assistance is needed to support the process of ratification of Conventions Nos 87 and 98. The Government of *Somalia* indicates that once a peaceful process could allow the adoption of new laws, the ratification of the ILO fundamental Conventions will be possible.

894. The Government of the *Islamic Republic of Iran* indicates that it is working with the social partners and the ILO on amending the Labour Code in order to prepare the ground for the ratification of Conventions Nos 87 and 98. The Government of the *United Arab Emirates* indicates that the ratification of Conventions Nos 87 and 98 is being contemplated under the Decent Work Country Programme (DWCP) and that ILO technical assistance is needed to find an alternative scheme for workers' representation.

895. The Government of the *Republic of Korea* explains that, at present, it is difficult to ratify Conventions Nos 87 and 98 because some provisions of the national labour legislation are not in conformity with the relevant international labour standards. Moreover, the ratification prospects for these instruments seems restricted due to continuous controversies over trade union pluralism at the enterprise level and a ban on wage payment to full-time union officials.

896. According to the Government of the *United States*, federal legislation and practice appears to be in general conformity with ILO Conventions Nos 87 and 98, although some challenges persists and no recent in-depth tripartite analysis has been performed regarding these Conventions. The Government further indicates that, to the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would welcome such proposals.

897. According to the Government of *China*, their national Constitution and other laws in principle protect the rights covered by Convention Nos 87 and 98 but in comparison with the Conventions, there are no concrete, special and detailed legislative provisions.

898. With regard to Convention No. 87, the Government of *Guinea-Bissau* indicates that while the ratification instrument has been signed by the previous Head of State in 2009, due to the political change, the ratification process must be repeated with ILO technical assistance. The Government of *Nepal* indicates that the process of ratification of Convention No. 87 was interrupted by the political transition period. However, the new Government is contemplating to ratify the Convention in the near future.

899. The Government of *Iraq* indicates that the national labour law of 1952 is not in conformity with Convention No. 87. However, a draft text has been submitted to the National Assembly with a view to amending the national labour legislation. Once this process is complete, the Convention could be ratified. The Government of *Jordan* indicates that the tripartite committee which had been set up two years ago proposed bringing national labour laws into a closer compliance with the requirements of Convention No. 87. The Government of *Sudan* refers to the ongoing revision of constitutional and civil laws, which must be completed before the ratification of Convention No. 87 could be considered. It further indicates that a tripartite committee has been set up to draft a new labour code.

900. The Government of *Malaysia* indicates that for the time being, the ratification of Convention No. 87 is not considered to be a priority as this instrument is not relevant to its national situation and historical background. The Government of *Myanmar* considers that the ILO should cooperate with Myanmar with regard to the ratification of the ILO fundamental Conventions and indicates that the ratification of non-ratified fundamental Conventions would be considered when appropriate.

901. The Government of *New Zealand* indicates it cannot ratify Convention No. 87 given that ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty. This has been contrary to New Zealand's employment relations legislative framework under successive governments.

902. The Government of *Brazil* indicates that Federal Constitution established in the legislation the principle of unity within the trade union movement, which prevents it to ratify Convention No. 87. The Government of *Morocco* indicates that non-compliance of certain provisions of public law with the principles of Convention No. 87, as the special status of certain categories of workers prevents the ratification of Convention No. 87.

903. The Government of *Mexico* indicates that, although national laws contain provisions prohibiting anti-union discrimination, they do not contain specific provisions protecting workers' and employers' organizations and their mutual interference and that the reason why it did not ratify this Convention is related to a reservation it wishes to make under *Article 1.2(b)* of the Convention.

904. The Government of *Canada* indicates that before initiating a technical review of Convention No. 98, the Canadian Government is waiting for a Supreme Court of Canada decision which is expected to clarify the scope of guarantee of freedom of association under the Canadian Charter of Rights and Freedoms. The Committee notes that the Supreme Court has rendered its decision in the *Fraser* case on 29 April 2011 and that it confirmed that section 2(d) of the Charter also protects the right to collective bargaining. Considering the foregoing, the Committee trusts that the Government will consider the ratification of Convention No. 98.

## Technical assistance

905. *Technical assistance received.* During the last few years, many state Members have benefited from the technical assistance provided by the Office regarding the application of Conventions Nos 87 and 98. Many governments received technical assistance in order to bring their legislation into conformity with these two instruments, and more particularly with the right to strike,<sup>2267</sup> or collective bargaining,<sup>2268</sup> or with the principle of freedom of association.<sup>2269</sup>

<sup>2267</sup> See, for example *Mali* – Report III (Part 2), 2010, para. 37; *Slovakia* – answer 34 of the questionnaire sent under art. 19 of the Constitution, 2011 (answer 34 of the questionnaire).

<sup>2268</sup> See, for example, *Costa Rica* – Report III (Part 2), 2009, para. 53; *Dominican Republic* – answer 34 of the questionnaire; *Slovakia* – answer 34 of the questionnaire; *Bulgaria* – answer 34 of the questionnaire; *Ecuador* – answer 34 of the questionnaire; *Sri Lanka* – answer 34 of the questionnaire; *Turkey* – answer 34 of the questionnaire; *El Salvador* – Report III (Part 2), 2009, para. 87.

<sup>2269</sup> *Ethiopia* – Report III (Part 2), 2010, para. 62; *Nicaragua* – Report III (Part 2), 2009, para. 59; *El Salvador* – Report III (Part 2), 2009, para. 87; *Namibia* – Report III (Part 2), 2007, para. 55; *Malawi* – Report III (Part 2), 2007, para. 55; *Argentina* – Report III (Part 2), 2010, para. 65; *Report III* (Part 2), 2007, para. 55; *Bahrain*, *Colombia*, *Ecuador*, *Panama*, *Peru*, *Ukraine* – Report III (Part 2), 2007, para. 55; *Bulgaria* – answer 34 of the questionnaire; *Ecuador* – answer 34 of the questionnaire; *Sri Lanka* – answer 34 of the questionnaire; *Turkey* – answer 34 of the questionnaire; *Cameroon* – Report III (Part 2), 2006, para. 44; *Russian Federation* – Report III (Part 2), 2006, para. 44.

906. Others received technical assistance in order to better promote social dialogue.<sup>2270</sup> Many countries also hosted follow-up missions to the conclusions adopted by the Conference at its previous sessions.<sup>2271</sup> Moreover, training activities were organized by the Office for both judges<sup>2272</sup> and civil servants.<sup>2273</sup>

907. *Technical assistance requested.* Furthermore, some governments have expressed their interest in receiving, or indicated that they would soon receive, technical assistance from the Office in the answers that they provided to the questionnaire sent under article 19 of the Constitution.<sup>2274</sup> For instance, some have indicated wishing to receive technical assistance in order to evaluate the conformity of their legislation (see, for example, *Pakistan, Turkey, and Chile*) or their practices (see, for example, *Belize, Benin, Pakistan, and Peru*) with the principles of freedom of association as developed by the supervisory mechanisms. Others wish to be equipped with tools to better promote syndicalism (see, for example, *El Salvador*) or re-evaluate their legislation on collective bargaining (see, for example, *China and Canada*). Finally, the setting of trade unions' representativity criteria has been the subject of a technical assistance request (see, for example, *Tunisia*), as well as the fundamental labour rights of civil servants (see, for example, *Zimbabwe*).

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<sup>2270</sup> *Philippines* – answer 34 of the questionnaire; *Georgia* – answer 34 of the questionnaire.

<sup>2271</sup> *Argentina* – Report III (Part 2), 2006, para. 35; *Belarus* – Report III (Part 2), 2009, para. 44, answer 34 of the questionnaire; *Colombia* – Report III (Part 2), 2010, paras 31–32, Report III (Part 2), 2006, para. 35; *Egypt* – Report III (Part 2), 2010, para. 33; *Guatemala* – Report III (Part 2), 2010, para. 34, Report III (Part 2), 2009, para. 47, Report III (Part 2), 2008, para. 41; *Cambodia* – Report III (Part 2), 2009, para. 45; *Djibouti* – Report III (Part 2), 2009, para. 46; *Bosnia and Herzegovina* – Report III (Part 2), 2008, para. 39. Furthermore, Costa Rica and Guatemala have recently received technical assistance missions respectively from 16–20 May 2011 and 9–13 May 2011.

<sup>2272</sup> *Chile* – Report III (Part 2) 2010, para. 66; *Colombia* – Report III (Part 2), 2009, para. 86; *Congo* – Report III (Part 2), 2008, para. 73; *Rwanda* – Report III (Part 2), 2008, para. 73.

<sup>2273</sup> *El Salvador* – answer 34 of the questionnaire; *Philippines* – answer 34 of the questionnaire.

<sup>2274</sup> See answers provided to question 35 of the questionnaire.

## Chapter 2

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### Elimination of forced labour

#### Obstacles to ratification and future prospects

908. The forced labour Conventions are among the most widely ratified of all ILO Conventions. To date, Conventions Nos 29 and 105 have received 175 and 171 ratifications respectively.<sup>2275</sup> Six countries that have not yet ratified any of the forced labour Conventions sent their reports under article 19 of the ILO Constitution, also providing information on measures taken with a view to ratifying these Conventions and indicating the obstacles preventing the ratification.

#### Convention No. 29

909. The Government of the *Republic of Korea* stated that it was difficult to ratify the Convention because the ILO considers that the supplementary military service imposed under the Military Service Act is not work of purely military character and is non-voluntary by nature; consequently it does not fall under the limits of exception provided for under *Article 2(2)* of the Convention. The Government considers that there are special circumstances facing the Republic of Korea in relation to the maintenance of the conscription system. The Committee encourages the Government to continue to seek ILO advice with a view to enabling it to ratify this Convention in the very near future and facilitate its implementation.

910. The Government of the *United States* stated that in order to determine whether a Convention should be recommended to the United States Senate for advice and consent to ratification, the Tripartite Advisory Panel on International Labour Standards has to conduct a thorough legal analysis of the provisions of the Convention. In the case of Convention No. 29 it has only undergone a partial review and, consequently, it is not possible to state with certainty what may be the obstacles to ratification of Convention No. 29. The Government indicated, however, that federal legislation appears to be in general conformance with the principles of the Convention.

911. Neither the Government of the Republic of Korea nor the Government of the United States referred to ratification prospects in the near future.

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<sup>2275</sup> Since the publication of its last General Survey on the eradication of forced labour, in 2007, *Canada*, *Samoa*, *Timor-Leste* and *Viet Nam* have ratified Convention No. 29, and *Samoa* has ratified Convention No. 105.

## Convention No. 105

912. Available information shows that three countries indicated their intention to ratify the Convention:

- The Government of the *Republic of Korea* indicated that the revision of the Criminal Code Act which is under review by the National Assembly could make it more consistent with the Convention. The revision of the Act would be taken into consideration for the ratification of the Convention.
- Referring to the lack of qualified human resources to carry out the ratification process, the Government of *Timor-Leste* asked for ILO technical assistance to support this process in 2011.
- The Government of *Viet Nam* indicated that it was in the process of adjusting national legislation in view of the ratification of the Convention and that the Ministry of Labour, Invalids and Social Affairs made a study and is now collecting comments in order to have the Convention ratified in 2011–12.

913. Two Governments referred to certain difficulties preventing ratification. The Government of *Japan* drew attention to the fact that the interpretation of the precise scope of forced labour practices prohibited by the Convention was not clear enough, and that further surveys on the relation between the relevant national legislation and the provisions of the Convention was needed. The Government of *Malaysia* referred to the difference of interpretation between the Government and the ILO supervisory bodies on the impact that work carried out during imprisonment may have on ensuring compliance with the Convention. The Government views the activities undertaken during imprisonment as upgrading prisoners' skills rather than forced labour. While indicating that it does not envisage any new developments in this regard, the Government stated that it does not preclude any further discussion and consultations with the ILO to look at the Convention.

## Technical assistance

914. The Committee has on numerous occasions drawn the Governments' attention to the importance of the technical assistance from the Office to help governments and the social partners to address the complex issues of forced labour at the national level. Such technical assistance should focus on the promotion of the awareness-raising and capacity-building programmes, the development of the national legislation and the law enforcement machinery, in order to ensure the effective implementation of the forced labour Conventions.

915. In its comments addressed to ratifying States, the Committee invited the governments concerned to avail themselves of the technical assistance of the ILO in order to facilitate the process of bringing their laws and practice into compliance with the Conventions,<sup>2276</sup> sometimes in accordance with the proposal of the Conference Committee on the Application of Standards. In a number of reports supplied under article 19 of the ILO Constitution on the Fundamental Principles and Rights at Work, the governments requested the Office's technical assistance on various issues related to the application of the forced labour Conventions and their ratification.<sup>2277</sup> Some

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<sup>2276</sup> See, for example, *Congo* – CEACR, observation (Convention No. 29), 2011; *Indonesia* – CEACR, observation (Convention No. 105), 2009; *Ireland* – CEACR, direct request (Convention No. 29), 2011; *Sudan* – CEACR, observation (Convention No. 29), 2010.

<sup>2277</sup> *Albania* (request for technical assistance in the preparation of reports on the application of the Conventions); *Azerbaijan* (request for advisory support and technical assistance on certain issues related to the implementation

Governments informed the Office of the measures taken with the technical assistance of the ILO.<sup>2278</sup>

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of the Conventions); *Burundi* (request for technical assistance and expertise in the evaluation of forced labour and trafficking cases); *Central African Republic* (request for technical assistance in training of labour administration and labour inspection officers and in the preparation of reports on the application of the Conventions); *Chile* (request for technical assistance in the organization of training seminars and workshops on the fundamental ILO Conventions for public officials and representatives of the social partners); *Côte d'Ivoire* (request for ILO assistance in the preparation of the in-depth study on forced labour and trafficking situation in the country); *Peru* (request for ILO assistance in the organization of training for the Ministry of Labour officials on the policy measures aiming at the eradication of forced labour); *Senegal* (request for technical assistance in the preparation of reports on the application of the Conventions); *Timor-Leste* (request for technical assistance to carry out the ratification process for Convention No. 105 and to fulfil the reporting obligations on the ratified fundamental Conventions).

<sup>2278</sup> Such information has been supplied in article 19 reports by the following countries: *Benin, Indonesia, Malaysia, Pakistan, Peru* and *Poland*. See also *Pakistan* – CEACR, observation (Convention No. 29), 2011.

## Chapter 3

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### Elimination of child labour

#### Obstacles to ratification and future prospects

916. To date, 174 countries have ratified Convention No. 182 and 161 countries have ratified Convention No. 138. In particular, in the last ten years there has been a resurgence in interest in Convention No. 138. Almost 60 per cent of ratifications have occurred since Convention No. 182 was adopted in 1999. The advent of this second standard on child labour was quite beneficial to the ratification rate of Convention No. 138; due to the complementary approaches contained in the Conventions, many States which undertook ratification of Convention No. 182 subsequently adopted Convention No. 138.

917. However, obstacles to ratification remain in several States. In reports submitted under article 19 of the ILO Constitution, several States have highlighted that, while the spirit of the Convention is respected in their country, their domestic legislation is not in complete conformity with the technical requirements of the Convention.<sup>2279</sup> The Committee observes that some of these technical issues, particularly relating to light work, could be overcome through full use of the flexibility clause contained in *Article 4* of the Convention. In this regard, several States of the Industrialized Market Economy Countries have emphasized that their national law and practice meets the fundamental objectives of the Convention.<sup>2280</sup> Additionally, some States have indicated that they lack the ability to apply the Convention in practice due to resource constraints or the socio-economic conditions of the country (including difficulties in monitoring the large number of children engaged in the informal economy).<sup>2281</sup> Nevertheless, several States have indicated that a review of the ratification of the Convention is under way, or that such a review will be undertaken in the near future.<sup>2282</sup>

#### Technical assistance

918. Numerous member States have benefited from technical assistance from the Office regarding the implementation of the fundamental child labour Conventions. For example, following the discussions at the Conference Committee on the Application of Standards

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<sup>2279</sup> These technical elements include a minimum age for admission to light work (such as in New Zealand, in addition to some states in Australia and some provinces in Canada) and the minimum age of 18 for admission to hazardous work (such as in Mexico).

<sup>2280</sup> Australia, Canada, New Zealand and United States.

<sup>2281</sup> Such as in Bangladesh, India (which emphasized the policy of ratifying a Convention only when both law and practice are in full conformity with the Convention), and Timor-Leste.

<sup>2282</sup> Responses from Australia (priority for consideration for ratification in the 2011–12 biennium), *Canada* (technical review began in 2011) and New Zealand (engaged in an ongoing dialogue with the ILO).



in 2005, both *Qatar* and *Niger* received technical assistance with regard to the implementation of Convention No. 182, and the Committee was subsequently able to note the significant progress made in these two cases.<sup>2283</sup> Furthermore, following the discussion of the Conference Committee on the application of Convention No. 138 in *Malaysia* in 2009, technical assistance was provided which contributed to the adoption of the Children and Young Persons (Employment) (Amendment) Act 2010, which addressed the outstanding issues concerning minimum age for admission to work, hazardous work and light work.

919. Other countries which have received technical assistance for the implementation of the fundamental child labour Conventions, as indicated in their reports submitted under article 19 of the ILO Constitution include *Belize, Brazil, Bulgaria, Burundi, Ethiopia, Indonesia, Jamaica, Republic of Moldova, Namibia, Pakistan, Philippines, Romania, Senegal* and *South Africa*. This support was often provided within the framework of an ILO–IPEC technical cooperation project. In addition, significant technical assistance has been given to governments with regard to possible ratification, including *Australia, Bangladesh, Canada* and *Timor-Leste* with respect to Convention No. 138.<sup>2284</sup> Moreover, several Governments have indicated, in their reports submitted under article 19 of the ILO Constitution, that prior to ratification, they received technical assistance from the Office, including the *Czech Republic* and *Sri Lanka*. Technical assistance activities have also included national and subregional workshops on the application of Conventions and reporting obligations (such as one held in 2010 for five member States of the South African Development Community).

920. Recognizing the positive impact of technical assistance on the implementation of Conventions Nos 138 and 182, the Committee has consistently encouraged governments to consider availing themselves of technical assistance, where appropriate, including *Ethiopia, Lebanon, Lesotho, Liberia, Malaysia, Nigeria, Sudan, United Arab Emirates* and *Uzbekistan*.<sup>2285</sup> Moreover, several member States have, in their reports submitted under article 19 of the ILO Constitution, requested the Office’s technical support regarding various issues related to the application of the child labour Conventions.<sup>2286</sup>

<sup>2283</sup> Following the Committee’s comments concerning the trafficking of children to *Qatar* for use in camel racing (a form of hazardous work), a technical advisory mission was undertaken to *Qatar* in March 2006. Following this mission, the Committee noted with satisfaction that the Government had adopted a number of practical measures aimed at effectively ensuring that camel owners do not use children under 18 years for camel racing. In *Niger*, following a fact-finding mission in 2007, the Committee noted with interest several measures taken to address child labour in artisanal gold mines and the use of a child for begging for economic purposes.

<sup>2284</sup> The Government of *Australia* indicates that it was provided with a particular useful response to a request for assistance in 2009, and that this will be used as a basis for considering ratification of the Convention in 2011–12. The Government of *Canada* indicates that it was provided advice with regard to Convention No. 138 in the context of a technical review, and the Government of *Bangladesh* indicates that technical support came in the form of seminars and workshops.

<sup>2285</sup> *Ethiopia* – CEACR, direct request, 2011; *Lebanon* – CEACR, observation, 2011; *Liberia* – CEACR, direct request 2011; *Lesotho* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2010; *Nigeria* – CEACR, observation, 2010; *Sudan* – CEACR, observation, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Uzbekistan* – CEACR, observation, 2010.

<sup>2286</sup> For example, *Albania, Antigua and Barbuda, Central African Republic, Chile* and *Sri Lanka*.

## Chapter 4

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### Equality of opportunity and treatment

#### Obstacles to ratification and future prospects

921. The Committee would like to underline that Conventions Nos 100 and 111 have almost reached universal ratification, with 168 and 169 ratifications registered respectively out of 183 member States, and welcomes the indications from several Governments of the steps being taken toward the ratification of these Conventions.

922. Concerning the ratification of Convention No. 100, the Committee notes that the Government of Liberia has indicated that the ratification process was under way and that the revised national labour law had been submitted to the Senate. The Government of Kuwait stated that the ratification had been discussed between the Ministry of Labour and Social Affairs and the social partners and that it had to be submitted to the Council of Ministers and the Parliament, while the Government of Bahrain indicated its intention to establish a tripartite committee that would deal with the ratification of the unratified fundamental Conventions. The Government of Somalia has also indicated its intention to ratify the Convention once the political instability of the country was overcome and the necessary legislation could be adopted. However, the Government of Qatar stated that there was no mechanism to define clearly the concept of “equal remuneration for work of equal value”, making it difficult for workers’ and employers’ organizations to implement it, particularly in the context of freedom of contract and the flexible labour market approach.

923. With respect to Convention No. 111, the Government of Japan indicated that given the wide range of discrimination grounds in employment and occupation provided for in the Convention, the conformity of national legislation with the Convention had to be carefully examined before it could be ratified. The Government of Thailand indicated that the ratification procedure involves public consultations by the Council of Ministers and the approval of the National Assembly. The Government of Malaysia considers that article 153(2) of the Federal Constitution providing for a privilege to the Bumiputeras in the public sector was an obstacle to the ratification of the Convention.

924. With respect to those countries that have ratified neither Convention No. 100 nor Convention No. 111, the Committee notes that the Government of Brunei Darussalam is considering the possibility of ratifying them, and that the Governments of Oman and Suriname indicated that a reform of the national legislation was needed prior to proceeding with ratification. The Governments of Maldives and Solomon Islands indicated that the ratification needed to be submitted to the Parliament. The Government of Timor-Leste indicates that Conventions Nos 100 and 111 are priorities for ratification; however, there are constraints due to the lack of qualified human resources to carry out the ratification process and reporting. It requested, as did the Government of Myanmar, ILO technical assistance in this regard. The Government of the United States stated that

the President's Committee on the ILO (PC/ILO), on the basis of a tripartite consensus, pledged to work toward the successful completion of the ratification process for Convention No. 111.

925. With respect to concerns raised regarding Convention No. 100, the Committee has sought to clarify the concept of "work of equal value" in its general observation, and through this General Survey. In terms of determining "work of equal value", objective job evaluation methods have been developed and used in all regions, and greatly assist in the application of the Convention. Concerning Convention No. 111, the Committee recalls that it allows for considerable flexibility in determining the methods to achieve the objectives of the Convention, though they need to be effective in addressing discrimination and promoting equality. Cooperation with workers' and employers' organizations in developing and ensuring the promotion of the national equality policy could be a means of overcoming some of the obstacles raised. The Committee also recalls that action required under the Convention is an ongoing process, and the elimination of discrimination in employment and occupation has not yet been achieved in any country. Concerning preferential treatment being given to one group, the Committee recalls that not all distinctions, exclusions or preferences are discriminatory under the Convention, and the particular situation raised would need to be examined to determine if it were justified in achieving the aims of the Convention.

926. The Committee wishes to underline the overall intention of most countries to ratify Conventions Nos 100 and 111. The Committee notes with interest that most of the obstacles enumerated do not appear to be insurmountable and believes that the universal ratification of these two Conventions will soon be reached. The Committee wishes to call the attention of all those countries that have not yet ratified the Conventions that the technical assistance of the Office is at their disposal. The Committee expects that, in the case of those countries that have already initiated the corresponding procedures, the Office will soon be in a position to register their ratifications.

## Technical assistance

927. Concerning technical assistance, the Committee notes the requests conveyed by several member States through the reports submitted pursuant to articles 19 and 22 of the ILO Constitution with respect to both Conventions Nos 100 and 111. The nature and the objectives of the assistance requested are varied.

928. Some countries have requested assistance from the ILO with respect to legislation or policies. *Mauritania* requested assistance to prepare a legal instrument prohibiting sexual harassment in employment and occupation. *Saudi Arabia* and *Seychelles* have requested assistance with respect to the development of a policy on equality, and *Thailand* referred to assistance needed regarding integrating gender into labour policies, plans and practices. Requests of technical assistance also refer to training addressed to governmental institutions or to social partners with respect to a wide range of issues, such as training on the concept of work or equal value (*Central African Republic*, *Mauritania* and *Mauritius*) or training on public policies on equal opportunities (*Peru*). Some countries requested that specific training be provided to labour inspectors in order to enhance their capacity to identify and address cases of discrimination in general, and violation of the principle of equal remuneration (*El Salvador*, *Guinea Bissau*, *Rwanda* and *United Republic of Tanzania*). Some countries have also requested training with respect to sexual harassment (*El Salvador*, *Mali* and *Uruguay*).

929. Collection of statistical data on the situation of men and women in the labour market was also the object of requests for technical assistance (*Albania, Cape Verde, Guinea-Bissau, Guinea, Malawi and Sierra Leone*), as well as the realization of studies or research to determine the nature, extent and causes of wage inequalities (*Albania and Syrian Arab Republic*), or studies on job classifications (*Guinea-Bissau*). Countries such as *Côte d'Ivoire, Malawi, Mali, Mauritius, Rwanda, Saint Vincent and the Grenadines*, and *Sierra Leone* have requested technical assistance in order to undertake objective job evaluation. Technical assistance has also been requested to organize awareness-raising campaigns on gender and HIV and AIDS issues, as well as concerning migration for employment (*Mauritius and Senegal*).

930. In those cases of persisting problems of application of the Conventions, the Committee has called the attention of a number of Governments concerning the possibility of benefiting from the technical assistance of the Office, including with respect to the following: drafting or reviewing legislation to ensure that there is a specific prohibition of both direct and indirect discrimination at all stages of employment and occupation (*United Arab Emirates*) as well as to ensure that legislation adequately reflects the principle of equal remuneration for work of equal value (*Guatemala, Mozambique and Sao Tome and Principe*); collecting statistical data (*Gabon and Guinea*); to apply objective job evaluation methods (*Cambodia and Sri Lanka*); and to ensure the application of Convention No. 111 (*Bangladesh*).

## Part VII. Conclusions

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931. The Committee welcomes this opportunity to address all eight fundamental Conventions together in a General Survey for the first time in the ILO's history, with a view to contributing to a better understanding of the inter-relationship and mutually reinforcing nature of these Conventions. The eight fundamental Conventions form an integral part of the United Nations human rights framework, and their ratification is an important sign of commitment to human rights. The Committee, therefore, calls on those member States that have not yet ratified all eight fundamental Conventions to do so, with a view to achieving universal ratification by 2015.

932. Over the last 20 years, the Committee has noted hundreds of important cases of progress in law and practice on the application of ratified ILO Conventions, more than 50 per cent of which concern the application of the eight fundamental Conventions. These cases of progress are in part a direct result of the fact that a number of countries have achieved full democracy over the past decades and have developed systems and mechanisms to protect human rights. In this respect, the Committee welcomes the fact that the provisions of the fundamental Conventions and the principles of the supervisory bodies have been applied in a significant number of countries through the jurisprudence of the national courts. Much of this progress is linked, however, to the action of the ILO supervisory bodies (which include in particular the Committee of Experts on the Application of Conventions and Recommendations, the Conference Committee on the Application of Standards of the International Labour Conference and the Committee on Freedom of Association) and the action of the Office at headquarters and in the field, through technical cooperation and technical assistance. The ILO supervisory machinery is thus both relevant and effective, is a valuable tool for the development of decent work and is essential to guarantee the rights of employers and workers. This vital mission explains the increasing interest of the international community in promoting the rights contained in these fundamental Conventions and the significant resources dedicated to the ILO to achieve this strategic objective. Moreover, an analysis of the "cases of interest" noted by the Committee in its reports (which are a reflection of the positive steps taken by the authorities) highlights that a very high number of draft laws and policies are under preparation or already submitted to the national legislative authorities, more often than not as a result of the Committee's previous requests to this end. This trend illustrates the importance of tripartite dialogue at the national level in improving the application of the ratified Conventions, which in turn reveals the vitality and dynamism of the interaction between governments and the Committee.

933. Despite these positive developments, the Committee notes that serious problems persist in a significant number of countries, as described below. The concern also extends to the fact that some member States with the highest populations have not ratified the eight fundamental Conventions. Moreover, in the context of the recent financial and economic crisis, the implementation of these Conventions has been jeopardized in a number of countries. The Committee stresses the importance of being

particularly vigilant in times of economic downturn to ensure the full implementation of these Conventions.

934. As regards Convention No. 87, the Committee underlines that in the absence of a democratic system in which fundamental rights and civil liberties are respected, freedom of association cannot be fully developed. In this respect, the Committee notes with serious concern the acts of violence against trade union leaders (murders, death threats, abductions, etc.) among certain countries in Latin America and Asia. Some acts of violence also target employers in some countries. The Committee stresses that the rights of workers' and employers' organizations can only be exercised in a democracy, in a climate where human rights are recognized and that is free from violence, pressure or threats of any kind against the leaders and members of these organizations. The Committee calls on all governments to ensure that this principle is respected.

935. The Committee further notes that one of the main concerns indicated by trade union organizations is the negative impact of precarious forms of employment on trade union rights and labour protection, notably short-term temporary contracts repeatedly renewed; subcontracting, even by certain governments in their own public service to fulfil statutory permanent tasks; and the non-renewal of contracts for anti-union reasons. Some of these modalities often deprive workers' access to freedom of association and collective bargaining rights, particularly when they hide a real and permanent employment relationship. Some forms of precariousness can dissuade workers from trade union membership. The Committee wishes to highlight the importance of examining in all member States, within a tripartite framework, the impact of these forms of employment on the exercise of trade union rights.

936. Other pressing matters concerning the application of Convention No. 87 include the denial and restrictions on the right of association of certain categories of workers (public servants, seafarers, workers in export processing zones, domestic workers, etc.). In a significant number of countries, the legislation contains restrictions on the categories of persons who may hold trade union office (distinction between nationals and foreigners), restrictions on the free election of trade union leaders, the requirement of an excessive number of workers or employers to establish a trade union or an employers' organization, refusal to register organizations or the requirement of prior authorization. Finally, a certain number of the Committee's comments concern the imposition by law of a trade union monopoly, denial of the right to establish federations and confederations, or limitations on their functions, dissolution of organizations by administrative authority and the prohibition of more than one union in a single enterprise or sector. The comments also address restrictions on various aspects of the right to strike, including the prohibition of this right for public servants other than those exercising authority in the name of the State; the imposition of compulsory arbitration; the prohibition of strikes in services which are not essential in the strict sense of the term; the denial of the right to strike for federations and confederations; the imposition by the government of minimum services without consulting the parties; and the imposition of penal sanctions for strike action.

937. As regards Convention No. 98, the problems which arise most frequently concern on the one hand, the slowness of administrative and judicial procedures in cases of anti-union discrimination or interference and the lack of sufficiently dissuasive sanctions; in some cases, the protection against acts of anti-union discrimination or interference only covers part of these acts. On the other hand, the problems concern the denial of the right of collective bargaining to all public servants or to public servants who are not engaged in the administration of the State and the requirement for trade union organizations to represent too high a proportion of workers to be recognized or to engage in collective

bargaining. In a number of countries, collective bargaining is subordinated to the government's economic policy. Finally, some countries exclude certain subjects from collective bargaining, or in some cases submit it to compulsory arbitration, restrict the right of the parties to determine the level of bargaining or prohibit collective bargaining for specific categories of workers or by federations and confederations.

938. In some countries, employers' organizations also face problems to organize freely outside the pre-established structure determined by governments or legislation and to exercise their right to free and voluntary collective bargaining at the level of their own choosing (at the industry level for example) and as determined by mutual agreement with the workers' organizations. In some cases, the employers' leaders also suffer reprisals for their actions in defence of the employers' interests.

939. The Committee underlines the importance of solving the problems highlighted in respect of freedom of association and collective bargaining given that they are not only fundamental rights at work but also because of their essential contribution to democracy as well as to economic and social development.

940. As regards Convention No. 29, the Committee observes that there are still instances of various forms of forced or compulsory labour imposed directly by the State, in violation of international standards, either for the purposes of production or service (such as various kinds of the national service obligations, e.g. the use of conscripts for non-military purposes, powers to call up labour outside emergency circumstances or restrictions on the freedom of workers to terminate employment, in particular in the public service and essential services), or as a punishment (e.g. where convicted persons are hired to or placed at the disposal of private parties).

941. The Committee observes that, in spite of the adoption of the constitutional and legislative provisions prohibiting forced labour, various problems of application in practice still exist in a number of countries. Thus, there are instances of vestiges of slavery and other slavery-like practices which still survive in certain countries, sometimes connected with abductions in the context of armed conflicts in various parts of the world. Forced labour is very often linked to poverty and discrimination, particularly if exacted in the private economy, and even more often – in the informal economy. There are cases of the entrapment of people through various forms of debt bondage and trafficking in persons for the purposes of sexual and labour exploitation. Members of the most vulnerable groups (such as migrant workers, domestic workers, agricultural workers, informal sector workers, members of indigenous communities) are the most affected.

942. In particular, the Committee expresses concern about the vulnerable situation of migrant workers, including migrant domestic workers, who are often subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour. The Committee requests the governments concerned to take all the necessary measures, both in legislation and in practice, to further increase the protection of this category of workers, providing the necessary assistance so as to enable them to assert their rights and denounce any abuses of which they may be victims. The Committee also requests the governments concerned to take all the measures necessary to identify, release and rehabilitate the victims of forced labour (such as bonded labourers and victims of trafficking or slavery-like practices) and to punish perpetrators, through strengthening labour inspection and law enforcement machinery, and by imposing adequate penal sanctions.

943. Over the past decade, the Committee has been systematically examining the problem of human trafficking in its numerous comments addressed to the ratifying States. The increasing trend of the trafficking in persons for the purposes of sexual and labour exploitation stands out as the most urgent problem of the twenty-first century in relation to Convention No. 29. The nature of this scourge requires the cooperation of all States, as all the regions of the world are affected. The concerted efforts of States have led to the adoption of special anti-trafficking laws, as well as new policies in this field. In this connection, the Committee emphasizes the importance of prevention and protection measures, as well as measures to strengthen the law enforcement machinery for the purposes of the efficient prosecution of traffickers and the strict application of penal sanctions, as required by the Convention, bearing in mind the recovery and social reintegration of the victims.

944. Finally, with a view to ensuring that the courts apply effective sanctions against persons who exact forced labour, the Committee has placed emphasis on obtaining information on the judicial proceedings initiated and the nature of the sanctions imposed by the courts. With a view to bringing an end to forced labour practices, it is indispensable for the legislation to define precisely the constituent components of the practice that is to be repressed and to establish sufficiently dissuasive penal sanctions. Moreover, as the vulnerability of the great majority of victims of forced labour has an impact on the extent to which they are able to assert their rights, States have to make every effort to ensure that the labour inspection services, the forces of order and the judicial authorities are provided with the necessary resources to identify forced labour practices, bring such practices to an end, prosecute those responsible, impose administrative, penal and economic sanctions that are commensurate with the seriousness of the violation and, finally, ensure that the victims are assisted effectively and are compensated for the damages they have suffered.

945. In relation to Convention No. 105, the examination of national law and practice has shown that there are still cases where freedom of expression remains subject to restrictions enforced by sanctions involving compulsory labour. Similar sanctions are applicable for various breaches of labour discipline by public servants or seafarers, or for participation in strikes. Provisions imposing such sanctions are often too general in scope to be compatible with the Convention, although the governments concerned sometimes express the intention of repealing or amending the provisions in question in order to ensure compliance.

946. Since the last General Survey on forced labour, the Committee has noted with satisfaction on a number of occasions the repeal of penal provisions punishing the organization or participation in strikes with penalties of imprisonment involving compulsory labour. However, in certain countries there still exist provisions restricting the right to strike (e.g. in public service or essential services) enforceable with sanctions involving an obligation to perform labour. In examining the compatibility of national legislation respecting strikes with Convention No. 105 – in so far as such legislation is enforceable with sanctions that may involve compulsory labour – the Committee has followed the principles developed in the field of freedom of association, and in particular, the principle of the proportionality of sanctions and that measures of imprisonment should not be imposed for the mere fact of organizing or participating in a peaceful strike. The Committee therefore considers that the necessary measures should be taken in order to ensure, both in legislation and in practice, that no sanctions involving compulsory labour can be imposed for the mere fact of a peaceful participation in strikes.



947. The Committee once again emphasizes the relevance and value of the concept of the prohibition of forced labour in all its forms, as established by the ILO Conventions. The definition of forced labour given in Convention No. 29 covers all the existing forms of this scourge, imposed both by the State and private persons, both “traditional” forms (such as *vestiges of slavery* or *slave-like practices* or various forms of *debt bondage*) and the relatively new forms of entrapment of people that have emerged in recent decades (such as *human trafficking*). Noting also a recent tendency that anti-trafficking laws are punishing the crime of trafficking with severe penal sanctions, the Committee recalls that all other existing forms of forced labour referred to above should not be dealt with as lesser offences and should be punished with sufficiently dissuasive penal sanctions which should be strictly enforced, as required by Convention No. 29. Moreover, it is necessary to emphasize that, in contrast with certain regional or universal instruments covering specific forced labour practices, the ILO forced labour Conventions, in line with the status of the abolition of forced labour as a peremptory norm of international law on human rights, require governments to develop a comprehensive legal and policy framework combating forced labour in all its forms.

948. As regards Convention No. 138, while child labour in the age group 5–17 years has continued to decline, the Committee notes with serious concern that child labour still affects 215 million children in the world. The incidence of child labour is more prevalent in sub-Saharan Africa where one in four children and adolescents are child labourers, compared to some one in eight in Asia and the Pacific and one in ten in Latin America and the Caribbean. Approximately 60 per cent of child labourers worldwide are engaged in the agricultural sector, and although there are legislative gaps in this regard, the main difficulty is the application of the Convention to this sector in practice. The Committee stresses that strengthened monitoring and targeted programmatic measures in the agricultural sector are essential for the eradication of child labour.

949. The Committee notes with serious concern that domestic work is a particularly problematic area, as an estimated 15.5 million children are engaged in domestic work worldwide. Moreover, a considerable number of children are engaged in hazardous domestic work in many countries. The Committee strongly emphasizes that the governments concerned should take the necessary measures in order to ensure that children engaged as domestic workers are not exploited in hazardous work conditions.

950. In relation to both Conventions Nos 138 and 182, the Committee considers that free and compulsory education is one of the most effective means of combating child labour and welcomes that important advances have been registered in the past decade, including rapid progress towards the goal of universal primary education. However, the situation remains alarming and a large number of countries are far from reaching the goal of universal primary education by 2015. The Committee notes with serious concern that there are globally 68 million children out of school. Among the difficulties observed, the Committee notes that there is an important gap between school enrolment ratios for girls and boys. Another gap the Committee wishes to identify is the absence of the provision of quality education. The Committee calls on the governments concerned to take the necessary measures to improve the functioning of the education system, in particular by increasing school enrolment and attendance rates of both boys and girls under the minimum age for admission to employment or work, including through ensuring access to free basic education.

951. As regards Convention No. 182, an area of serious concern for the Committee is the persistence of the compulsory recruitment of children into national armed forces or non-state armed groups in conflicts around the world. This practice, in violation of Convention No. 182, may also lead to other serious violations of the rights of children, in

the form of abductions, murders and sexual violence. The Committee calls on the governments concerned to take immediate and effective measures to put a stop in practice to the use of child soldiers and to ensure that thorough investigations and robust prosecutions of the perpetrators of these egregious crimes are carried out and sufficiently effective and dissuasive penalties are applied in practice, together with adequate provisions for the rehabilitation of child victims.

952. Moreover, the compulsory mobilization of children in the context of school programmes, where children are removed from public schools and made to work during school hours, is another area of grave concern. As the practice of compulsory labour within schools is often deep-rooted within the education system and production processes of the country, many legislative measures have proven too weak or ineffective to address the phenomenon. Member States in which children are engaged in compulsory labour through their schools must take immediate and effective measures to put a stop to this serious violation in practice.

953. Over the past decade, the Committee has observed that while children are trafficked globally for commercial sexual and labour exploitation, a significant number of countries have prohibited the sale and trafficking of children. This reflects a real commitment to combat a problem that appears to be steadily on the increase in some parts of the world. The problem of child trafficking stems from the exploitation of children compounded by a lack of effective enforcement of the legislation, either due to a lack of resources or low rate of prosecutions and convictions. The Committee also expresses serious concern regarding reports of complicity of government officials in the trafficking of children. In addition, a high number of member States have adopted effective and time-bound measures to combat trafficking, including through the implementation of programmes or national plans of action. These include the establishment of shelters or crisis centres for child victims of trafficking which provide services aimed at satisfying the daily needs and preparing the social integration of child victims of violence and trafficking, including legal, medical and psychological help, assistance with repatriation and vocational or educational training, and a safe place of residence. As this problem affects in practice a greater number of girls than boys, particularly in the case of child trafficking for sexual exploitation or domestic work, the Committee stresses that member States must take measures taking into account the special situation of girls in these efforts.

954. The Committee has also observed over the past decade positive legislative as well as programmatic measures taken by governments in order to combat the commercial sexual exploitation of children. However, with globalization, new problems have arisen, with regard to the exploitation of children in pornography through the Internet as well as the growth of child sex tourism. Enforcing the relevant legislation has been difficult, particularly due to the transnational nature of these crimes. The Committee therefore urges source, transit and destination countries of Internet child pornography and child sex tourism to strengthen their efforts to investigate, prosecute and convict perpetrators of these worst forms of child labour, and to pursue their efforts towards full and effective cooperation.

955. The Committee observes with serious concern that a considerable number of children are estimated to be employed in hazardous work globally: approximately 53 million children (4.3 per cent) aged 5–14 years and 62 million children (16.9 per cent) aged 15–17 years were estimated to be performing hazardous labour in 2008. A positive trend that has emerged is that a great number of countries have adopted legislation to prohibit children under 18 years of age from carrying out hazardous work. However, as national legislation often fails to cover children who perform hazardous work outside of

a labour relationship, the Committee calls on the governments concerned to take measures to ensure that self-employed children or those working in the informal economy are protected from hazardous work.

956. As regards Conventions Nos 100 and 111, there is considerable awareness and acceptance of the importance of equality and non-discrimination, as these concepts are at the heart of all human rights discourse. Acute violations of the Conventions continue. In addition, there are subtle, chronic problems and deeply embedded attitudes that underlie discrimination and unequal pay, which are often more difficult to identify and overcome. Therefore, regular assessment, action, monitoring, further assessment and adjustment, including to address de facto inequalities, is necessary if progress is to be achieved. In addition, the national equality policy required under Convention No. 111, which should incorporate measures to ensure equal remuneration for work of equal value, needs to go beyond legislation prohibiting discrimination, and include vigorous proactive measures to promote equality, effective enforcement and remedies, and monitoring of the impact of measures. The Committee notes the increasing role of specialized equality bodies, such as equality bodies and ombudspersons, in this respect, and the importance of means to assess impact and progress. It is also essential to address the underlying causes of discrimination and unequal pay, including occupational segregation and gender stereotyping.

957. The exclusion of certain groups from legislation providing for non-discrimination and equal remuneration for work of equal value remains a concern, limiting their rights and protections, and denying them access to remedies and redress. Such groups include civil servants, domestic workers, migrant workers, informal economy workers, agricultural workers, workers in export processing zones, and non-citizens. Of particular concern in this context is the vulnerability of migrant domestic workers to discrimination, including on multiple grounds, and their low wages due to the persistent undervaluing of their work. The Committee also stresses the need to monitor closely the impact of austerity measures on the employment situation of groups particularly vulnerable to the impact of the economic crisis, including ethnic minorities, so as to address effectively direct or indirect discrimination, including unequal pay that may occur. The need for Governments to promote tolerance among and between different groups of the population is essential in this context.

958. The Committee recalls that pay differentials remain one of the most persistent forms of inequality, and that globally, the gender pay gap is approximately 23 per cent, and likely much higher if the wages of those not working full time in regular employment are included. Difficulties in applying Convention No. 100 in law and in practice have resulted in particular from a lack of understanding of the scope and implications of the concept of “work of equal value”, which permits a broad scope of comparison, including between jobs of an entirely different nature. In order to establish whether different jobs are of equal value, the Committee stresses that there has to be an examination of the respective tasks involved, on the basis of entirely objective and non-discriminatory criteria, yet this step is absent in a number of countries. Considerable progress is still needed in developing and applying objective job evaluation methods. The Committee also notes that very few countries promote the principle of equal remuneration for men and women for work of equal value in the context of minimum wage fixing, though this can be an important means by which the Convention is applied.

959. The Committee is concerned that in a number of countries, legal provisions are still narrower than the principle laid down in Convention No. 100, thus denying an effective legal framework for the application of the principle. There also continue to be discriminatory provisions in legislation and collective agreements, limiting certain

allowances or benefits to men. The Committee urges the governments concerned to take the necessary steps to amend their legislation to ensure the right to equal remuneration for men and women for work of equal value, and to repeal any discriminatory provisions relating to allowances or benefits.

960. As regards Convention No. 111, the Committee observes that substantial progress has made been in many countries to adopt comprehensive gender equality policies and action plans, though translating such policies and plans into substantive equality in employment and occupation is often lacking. The Committee is concerned about the persistence of restrictions on the jobs women can do, either in law or in practice, which are based on stereotyped assumptions. The Committee also expresses concern that far fewer countries have adopted proactive and comprehensive measures aimed at combating discrimination and promoting substantive equality in respect of other grounds of discrimination, including race, colour and national extraction. Such measures are important given the persistent and sometimes increasing discrimination against specific groups, including ethnic and religious minorities, indigenous and tribal peoples, the Roma, and people of African descent. It is essential that in implementing the national policy required under the Convention, attention be given to all the grounds, and to the changing face of discrimination. As there is often a fine line between the various grounds of discrimination in practice, as well as complex intersections between them, the Committee considers that more attention needs to be given to addressing multiple and structural discrimination.

961. The Committee welcomes the increased awareness of the many manifestations of discrimination, and the consequent attention being given to addressing an expanded range of grounds, including discrimination based on real or perceived HIV status, age, disability, nationality and sexual orientation, and encourages those countries that have not yet done so to consider addressing such grounds through legislation and proactive measures.

962. Noting the importance in most countries of a legislative framework to ensure the right to non-discrimination and ensure effective enforcement, the Committee calls on countries to review regularly the protection afforded by the legislation to ensure that it remains appropriate and effective, particularly in the light of the regularly changing context and newly emerging grounds of discrimination. The Committee observes that a number of features contribute to addressing discrimination and promoting equality. Therefore, it particularly welcomes legislation containing the following: covering all workers; providing a clear definition of direct and indirect discrimination as well as sexual harassment; prohibiting discrimination at all stages of the employment process; explicitly assigning supervisory responsibilities to competent national authorities; establishing accessible dispute resolution; providing dissuasive sanctions and appropriate remedies; shifting or reversing the burden of proof; providing protection from retaliation; allowing for affirmative action measures; and providing for the adoption and implementation of equality policies or plans at the workplace, as well as the collection of relevant data at different levels.

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963. The eight Conventions, taken together, are all the more relevant today in the face of global economic and other challenges impinging on the welfare and livelihood of workers in all regions. They provide the key ethical and normative framework for fundamental rights in the world of work which require even more rigorous implementation at the national level through effective laws, policies, resources, practical programmes, mechanisms and capacity building. Indeed, they are part and parcel of the

overarching architecture for the universality of human rights, offering protection to all, and responding closely to the quest for social justice in a globalized setting. Actually and potentially, they are catalytic to the UN system, the international community and local communities as a whole. To this end, various issues permeating this General Survey invite greater attention for the future.

964. In this regard, the Committee considers that the informal economy presents not only a formidable challenge with regard to the application of the fundamental Conventions to informal economy workers, but also a call to action, where the fundamental principles and rights at work can have an important impact on the rights and protection of workers worldwide. The Committee, therefore, calls on all member States to take concrete steps towards ensuring that workers in the informal economy benefit fully from the principles and rights set out in the eight fundamental Conventions.

965. The Committee also observes that agricultural workers are a group to whom the right to organize is sometimes denied, and in which bonded labour is the most widespread. Moreover, women and migrant workers are often concentrated in the agricultural sector, where wages are in general particularly low. Finally, around 60 per cent of child labourers worldwide are engaged in the agricultural sector, and the main difficulty is the application of the child labour Conventions to this sector in practice. The Committee calls on governments to ensure that agricultural workers enjoy the rights and are afforded the protections established in the fundamental Conventions.

966. The Committee wishes to highlight that domestic workers represent a group that are, in many States, denied decent work, and the interconnectivity of the fundamental Conventions is evident in the particular manner in which the principles apply to this vulnerable group. While trade unions have increased their efforts to reach out to domestic workers, the labour legislation in a number of countries still does not cover this category of workers, as a result of which there are no legal provisions applicable to them, including in relation to trade union rights, and there are no institutions or inspectors for their enforcement. Moreover, in numerous countries, domestic workers are trapped in situations of forced labour, and in many cases they are restrained from leaving the employers' homes through threats or violence. Furthermore, in several countries, domestic work remains excluded from the scope of application of the national legislation, which is particularly problematic in countries where there are a high number of children under the minimum age engaged in this sector. Additionally, some child domestic workers are exploited under conditions that qualify as forced labour. Finally, current estimates on domestic workers indicate that of the 52.6 million domestic workers worldwide, the vast majority are women (83 per cent). In a range of countries the scope of legislation embodying the principle of equal remuneration for men and women for work of equal value does not extend to domestic workers, and they typically earn less than half, and sometimes no more than 20 per cent, of average wages. The Committee urges all member States to ensure that the principles of the fundamental Conventions are applied to domestic workers, and encourages them to consider ratifying the Domestic Workers Convention, 2011 (No. 189).

967. The Committee observes that with globalization, international migration has continued to increase with millions of women and men leaving their homes and crossing national borders each year. In this regard, the Committee notes that several countries still contain restrictions of varying degrees of importance relating to nationality and residence, including citizenship requirements for the establishment of trade unions for migrant workers. Furthermore, these workers are often subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse, which transforms their employment into situations

analogous to forced labour. For migrant workers, their regular or irregular situation in the national territory may have an impact on their ability to turn to the competent authorities. In addition, children who migrate from the countryside to work in urban areas may be particularly vulnerable to exploitative work, and in several countries, such children comprise the majority of domestic workers and street children in urban centres. Moreover, the children of migrant workers face unequal access to education, considerably increasing their risk for engagement in child labour. Finally, migrant workers are particularly vulnerable to prejudices and differences in treatment in the labour market on grounds such as race, colour and national extraction which often intersect with other grounds such as gender and religion. The Committee underlines that the vulnerable situation of these workers reinforces the importance of ensuring that they benefit from the rights and protections provided for in the fundamental Conventions.

968. In this respect, some of the problems related to the application of the eight Conventions, including in the informal economy, can be addressed through various enforcement mechanisms, including through labour inspection. The Committee wishes to underline the key role the labour inspectorate plays in implementing the Conventions, and calls on the governments concerned to strengthen the capacity and expand the reach of the labour inspectorate, not only in order to identify violations and to ensure that the protections guaranteed by the fundamental Conventions are afforded to all workers, but also in order to enable it to have an important role in the prevention of violations of the Conventions. Moreover, cooperation between the labour inspectorate and law enforcement bodies, such as the police, border control officials, immigration officers and the judiciary, is essential for the conduct of rapid, effective and impartial investigations, and where appropriate, initiating prosecutions against those responsible for violations, bearing in mind that the main objective of the labour inspection system is to protect the rights and interests of workers. In this regard, the effective cooperation between the labour inspection services and the justice system can be achieved through the adoption of legal provisions and the implementation of educational measures and the exchange of information. The Committee calls on governments concerned to strengthen the capacity of law enforcement agencies to ensure that perpetrators of violations of the Conventions are prosecuted and that sufficiently effective and dissuasive penalties are imposed so as to avoid creating a climate of impunity.

969. Finally, the Committee wishes to underline that social dialogue is both a key contributing process to the implementation of the fundamental Conventions, and a positive outcome when these Conventions are effectively applied. Where there is an absence of genuine social dialogue in a country, the application of the fundamental Conventions is seriously hindered. In this regard, the Committee welcomes the increasingly important role of employers' and workers' organizations in the improved application of the fundamental Conventions. However, many member States have indicated that they require further technical assistance and/or cooperation to ensure better implementation of the fundamental Conventions. The Committee therefore considers it essential to provide technical assistance to such member States, and this assistance should focus on, inter alia, the promotion of awareness-raising and capacity-building programmes, the development of the national legislation and the strengthening of relevant monitoring mechanisms.

970. The Committee is of the view that the abovementioned trends, as well as challenges, in the implementation of the Conventions, illustrated in this General Survey, present a clear picture of the interconnected and mutually reinforcing relationship between the eight fundamental Conventions. Therefore, the Committee can only emphasize the vital importance of not only ratifying, but also effectively implementing,

these fundamental Conventions, with a view to building a social framework to ensure peace, stability, economic development and prosperity and social justice worldwide.

## Appendix

### List of ratifications of fundamental Conventions and of reports received pursuant to Article 19

|                                 | C029     | C087     | C098     | C100     | C105     | C111     | C138     | C182     | Questions for all member States (32-37) |
|---------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|---|
| Afghanistan                     | --       | --       | --       | Ratified | Ratified | Ratified | --       | --       | --                                      |
| Albania                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Algeria                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Angola                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Antigua and Barbuda             | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Argentina                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Armenia                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Australia                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received | Ratified | Received                                |
| Austria                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Azerbaijan                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Bahamas                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --                                      |
| Bahrain                         | Ratified | Received | Received | Received | Ratified | Ratified | Received | Ratified | Received                                |
| Bangladesh                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received | Ratified | Received                                |
| Barbados                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Belarus                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Belgium                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Belize                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Benin                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Bolivia, Plurinational State of | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Bosnia and Herzegovina          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Botswana                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --                                      |
| Brazil                          | Ratified | Received | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Brunei Darussalam               | --       | --       | --       | --       | --       | --       | --       | Ratified | --                                      |
| Bulgaria                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Burkina Faso                    | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --                                      |
| Burundi                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Cambodia                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --                                      |
| Cameroon                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Canada                          | Received | Ratified | Received | Ratified | Ratified | Ratified | Received | Ratified | Received                                |
| Cape Verde                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --       | Ratified | --                                      |
| Central African Republic        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Chad                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --                                      |
| Chile                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| China                           | Received | Received | Received | Ratified | Received | Ratified | Ratified | Ratified | Received                                |
| Colombia                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received                                |
| Comoros                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --                                      |



|                                  | C029     | C087     | C098     | C100     | C105     | C111     | C138     | C182     | Questions<br>for all<br>member<br>States<br>(32-37) |
|----------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|---|
| Congo                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Costa Rica                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Côte d'Ivoire                    | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Croatia                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Cuba                             | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received | Received  |
| Cyprus                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Czech Republic                   | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Democratic Republic of the Congo | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Denmark                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Djibouti                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Dominica                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Dominican Republic               | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Ecuador                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Egypt                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| El Salvador                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Equatorial Guinea                | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Eritrea                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --       | --  |
| Estonia                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Ethiopia                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Fiji                             | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Finland                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| France                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Gabon                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received | Ratified | Received  |
| Gambia                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Georgia                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Germany                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Ghana                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --       | Ratified | --  |
| Greece                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Grenada                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Guatemala                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Guinea                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Guinea-Bissau                    | Ratified | --       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Guyana                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Haiti                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Honduras                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Hungary                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Iceland                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| India                            | Ratified | Received | Received | Ratified | Ratified | Ratified | Received | Received | Received  |
| Indonesia                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Iran, Islamic Republic of        | Ratified | Received | Received | Ratified | Ratified | Ratified | Received | Ratified | Received  |
| Iraq                             | Ratified | Received | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Ireland                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Israel                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Italy                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Jamaica                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Japan                            | Ratified | Ratified | Ratified | Ratified | Received | Received | Ratified | Ratified | Received  |
| Jordan                           | Ratified | Received | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Kazakhstan                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Kenya                            | Ratified | --       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Kiribati                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |

|                                  | C029     | C087     | C098     | C100     | C105     | C111     | C138     | C182     | Questions<br>for all<br>member<br>States<br>(32-37) |
|----------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|---|
| Korea, Republic of               | Received | Received | Received | Ratified | Received | Ratified | Ratified | Ratified | Received  |
| Kuwait                           | Ratified | Ratified | Ratified | --       | Ratified | Ratified | Ratified | Ratified | --  |
| Kyrgyzstan                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Lao People's Democratic Republic | Ratified | Received | Received | Ratified | Received | Ratified | Ratified | Ratified | Received  |
| Latvia                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Lebanon                          | Ratified | --       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Lesotho                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Liberia                          | Ratified | Ratified | Ratified | --       | Ratified | Ratified | --       | Ratified | --  |
| Libya                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Lithuania                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Luxembourg                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Madagascar                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Malawi                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Malaysia                         | Ratified | Received | Ratified | Ratified | Received | Received | Ratified | Ratified | Received  |
| Maldives, Republic of            | --       | --       | --       | --       | --       | --       | --       | --       | --  |
| Mali                             | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Malta                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Marshall Islands                 | --       | --       | --       | --       | --       | --       | --       | --       | --  |
| Mauritania                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Mauritius                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Mexico                           | Ratified | Ratified | Received | Ratified | Ratified | Ratified | Received | Ratified | Received  |
| Moldova, Republic of             | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Mongolia                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Montenegro                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Morocco                          | Ratified | Received | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Mozambique                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Myanmar                          | Ratified | Ratified | --       | --       | --       | --       | --       | --       | --  |
| Namibia                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Nepal                            | Ratified | --       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Netherlands                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| New Zealand                      | Ratified | Received | Ratified | Ratified | Ratified | Ratified | Received | Ratified | Received  |
| Nicaragua                        | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Niger                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Nigeria                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Norway                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Oman                             | Ratified | Received | Received | Received | Ratified | Received | Ratified | Ratified | Received  |
| Pakistan                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Panama                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Papua New Guinea                 | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Paraguay                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Peru                             | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Philippines                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Poland                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Portugal                         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Qatar                            | Ratified | Received | Received | Received | Ratified | Ratified | Ratified | Ratified | Received  |
| Romania                          | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Russian Federation               | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Rwanda                           | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Saint Kitts and Nevis            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Saint Lucia                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --       | Ratified | --  |
| Saint Vincent and the Grenadines | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Samoa                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |

|   | C029     | C087     | C098     | C100     | C105     | C111     | C138     | C182     | Questions<br>for all<br>member<br>States<br>(32-37) |
|---|----------|----------|----------|----------|----------|----------|----------|----------|---|
| San Marino                                | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Sao Tome and Principe                     | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Saudi Arabia                              | Ratified | Received | Received | Ratified | Ratified | Ratified | Received | Ratified | Received  |
| Senegal                                   | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Serbia                                    | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Seychelles                                | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Sierra Leone                              | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --       | --       | --  |
| Singapore                                 | Ratified | --       | Ratified | Ratified | --       | --       | Ratified | Ratified | --  |
| Slovakia                                  | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Slovenia                                  | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Solomon Islands                           | Ratified | --       | --       | --       | --       | --       | --       | --       | --  |
| Somalia                                   | Ratified | --       | --       | --       | Ratified | Ratified | --       | --       | --  |
| South Africa                              | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Spain                                     | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Sri Lanka                                 | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Sudan                                     | Ratified | Received | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Suriname                                  | Ratified | Ratified | Ratified | --       | Ratified | --       | --       | Ratified | --  |
| Swaziland                                 | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Sweden                                    | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Switzerland                               | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Syrian Arab Republic                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Tajikistan                                | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Tanzania, United Republic of              | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Thailand                                  | Ratified | Received | Received | Ratified | Ratified | Received | Ratified | Ratified | Received  |
| The former Yugoslav Republic of Macedonia | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Timor-Leste                               | Ratified | Ratified | Ratified | Received | Received | Received | Received | Ratified | Received  |
| Togo                                      | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Trinidad and Tobago                       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Tunisia                                   | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Turkey                                    | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Turkmenistan                              | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --       | --       | --  |
| Tuvalu                                    | --       | --       | --       | --       | --       | --       | --       | --       | --  |
| Uganda                                    | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Ukraine                                   | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| United Arab Emirates                      | Ratified | Received | Received | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| United Kingdom                            | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| United States                             | Received | Received | Received | Received | Ratified | Received | Received | Ratified | Received  |
| Uruguay                                   | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Uzbekistan                                | Ratified | --       | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Vanuatu                                   | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --       | Ratified | --  |
| Venezuela, Bolivarian Republic of         | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |
| Viet Nam                                  | Ratified | Received | Received | Ratified | Received | Ratified | Ratified | Ratified | Received  |
| Yemen                                     | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Zambia                                    | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | --  |
| Zimbabwe                                  | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Ratified | Received  |