



International  
Labour  
Office  
Geneva

# Application of International Labour Standards 2018



REPORT III (Part A)

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

**International Labour Conference, 107th Session, 2018**

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

*(articles 19, 22, 23 and 35 of the Constitution)*

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

**Report III (Part A)**

General Report  
and observations concerning particular countries

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

- (a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) (**Part A, pages 1–4**).
- (b) **Part I: the General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work (**Part A, pages 5–36**).
- (c) **Part II: Observations concerning particular countries** cover the sending of reports, the application of ratified Conventions (see section I), and the obligation to submit instruments to the competent authorities (see section II) (**Part A, pages 37–581**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III (Part B)) and this year it concerns the Hours of Work (Industry) Convention, 1919 (No. 1), the Weekly Rest (Industry) Convention, 1921 (No. 14); the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); the Forty-Hour Week Convention, 1935 (No. 47); the Reduction of Hours of Work Recommendation, 1962 (No. 116); the Holidays with Pay Recommendation, 1954 (No. 98); the Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990; the Night Work of Women (Agriculture) Recommendation, 1921 (No. 13); the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103); the Holidays with Pay Convention (Revised), 1970 (No. 132); the Night Work Convention, 1990 (No. 171); the Night Work Recommendation, 1990 (No. 178); the Part-Time Work Convention, 1994 (No. 175); and the Part-Time Work Recommendation, 1994 (No. 182), (**Part B**).

The report of the Committee of Experts is also available at: [www.ilo.org/normes](http://www.ilo.org/normes).

<b>READER'S NOTE .....</b>	<b>1</b>
Overview of the ILO supervisory mechanisms .....	1
Role of employers' and workers' organizations .....	1
Origins of the Conference Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations .....	2
Committee of Experts on the Application of Conventions and Recommendations .....	2
Report of the Committee of Experts .....	3
Committee on the Application of Standards of the International Labour Conference .....	3
The Committee of Experts and the Conference Committee on the Application of Standards .....	4
<b>PART I.    GENERAL REPORT .....</b>	<b>5</b>
<b>I.    INTRODUCTION .....</b>	<b>7</b>
Composition of the Committee .....	7
Working methods .....	7
Relations with the Conference Committee on the Application of Standards .....	8
Mandate .....	10
<b>II.    COMPLIANCE WITH STANDARDS-RELATED OBLIGATIONS .....</b>	<b>13</b>
A. Reports on ratified Conventions (articles 22 and 35 of the Constitution) .....	13
B. Examination by the Committee of Experts of reports on ratified Conventions .....	16
C. Reports under article 19 of the Constitution .....	28
D. Submission of instruments adopted by the Conference to the competent authorities (article 19, paragraphs 5, 6 and 7, of the Constitution) .....	28
<b>III.    COLLABORATION WITH INTERNATIONAL ORGANIZATIONS AND FUNCTIONS RELATING TO OTHER INTERNATIONAL INSTRUMENTS .....</b>	<b>31</b>
Cooperation with international organizations in the field of standards .....	31
United Nations treaties concerning human rights .....	31
European Code of Social Security and its Protocol .....	32
<b>APPENDIX TO THE GENERAL REPORT .....</b>	<b>33</b>
Composition of the Committee of Experts on the Application of Conventions and Recommendations .....	33
<b>PART II.    OBSERVATIONS CONCERNING PARTICULAR COUNTRIES .....</b>	<b>37</b>
<b>I.    OBSERVATIONS CONCERNING REPORTS ON RATIFIED CONVENTIONS (ARTICLES 22, 23, PARAGRAPH 2, AND 35 OF THE CONSTITUTION) .....</b>	<b>39</b>
General observation .....	39
General observations .....	39
Freedom of association, collective bargaining, and industrial relations .....	43
Forced labour .....	175
Elimination of child labour and protection of children and young persons .....	229
Equality of opportunity and treatment .....	337
Tripartite consultation .....	415
Labour administration and inspection .....	433
Employment policy and promotion .....	457
Vocational guidance and training .....	493
Employment security .....	495
Wages .....	503
Working time .....	521
Occupational safety and health .....	523
Social security .....	535
Social policy .....	541
Migrant workers .....	543
Seafarers .....	551

Fishers.....	553
Dockworkers .....	557
Indigenous and tribal peoples.....	559
Specific categories of workers.....	565
<b>II. OBSERVATIONS CONCERNING THE SUBMISSION TO THE COMPETENT AUTHORITIES OF THE CONVENTIONS AND RECOMMENDATIONS ADOPTED BY THE INTERNATIONAL LABOR CONFERENCE (ARTICLE 19 OF THE CONSTITUTION) .....</b>	<b>567</b>
General observation.....	567
<b>APPENDICES</b>	
I. Reports requested on ratified Conventions (articles 22 and 35 of the Constitution) List of reports registered as at 9 December 2017 and reports not received .....	585
II. Statistical table of reports received on ratified Conventions as at 9 December 2017 (article 22 of the Constitution) .....	600
III. List of observations made by employers' and workers' organizations.....	603
IV. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities .....	612
V. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities (31st to 106th Sessions of the International Labour Conference, 1948–2017) .....	614
VI. Overall position of member States with regard to the submission to the competent authorities of the instruments adopted by the Conference (as at 9 December 2017) .....	628
VII. Comments made by the Committee, by country.....	630

## List of Conventions and Protocols by Subject

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

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

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

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

### 2 Forced labour

- C029 **Forced Labour Convention, 1930 (No. 29)**
- C105 **Abolition of Forced Labour Convention, 1957 (No. 105)**
- P029 Protocol of 2014 to the Forced Labour Convention, 1930

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

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

### 4 Equality of opportunity and treatment

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

### 5 Tripartite consultation

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

**6 Labour administration and inspection**

- C063 Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)
- ★ C081 *Labour Inspection Convention, 1947 (No. 81)*
- C085 Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)
- C129 *Labour Inspection (Agriculture) Convention, 1969 (No. 129)*
- C150 Labour Administration Convention, 1978 (No. 150)
- C160 Labour Statistics Convention, 1985 (No. 160)
- P081 Protocol of 1995 to the Labour Inspection Convention, 1947

**7 Employment policy and promotion**

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

**8 Vocational guidance and training**

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

**9 Employment security**

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

**10 Wages**

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

**11 Working time**

- C001 Hours of Work (Industry) Convention, 1919 (No. 1)
- C004 Night Work (Women) Convention, 1919 (No. 4)
- C014 Weekly Rest (Industry) Convention, 1921 (No. 14)
- C020 Night Work (Bakeries) Convention, 1925 (No. 20)
- C030 Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
- C031 Hours of Work (Coal Mines) Convention, 1931 (No. 31)
- C041 Night Work (Women) Convention (Revised), 1934 (No. 41)
- C043 Sheet-Glass Works Convention, 1934 (No. 43)
- C046 Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46)
- C047 Forty-Hour Week Convention, 1935 (No. 47)
- C049 Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49)
- C051 Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51)
- C052 Holidays with Pay Convention, 1936 (No. 52)
- C061 Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)
- C067 Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67)
- ★ C089 Night Work (Women) Convention (Revised), 1948 (No. 89)
- ★ C101 Holidays with Pay (Agriculture) Convention, 1952 (No. 101)
- C106 Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
- C132 Holidays with Pay Convention (Revised), 1970 (No. 132)
- C153 Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)
- C171 Night Work Convention, 1990 (No. 171)
- C175 Part-Time Work Convention, 1994 (No. 175)
- P089 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

**12 Occupational safety and health**

- C013 White Lead (Painting) Convention, 1921 (No. 13)
- C045 Underground Work (Women) Convention, 1935 (No. 45)
- C062 Safety Provisions (Building) Convention, 1937 (No. 62)
- C115 Radiation Protection Convention, 1960 (No. 115)
- C119 Guarding of Machinery Convention, 1963 (No. 119)
- C120 Hygiene (Commerce and Offices) Convention, 1964 (No. 120)
- C127 Maximum Weight Convention, 1967 (No. 127)
- C136 Benzene Convention, 1971 (No. 136)
- C139 Occupational Cancer Convention, 1974 (No. 139)
- C148 Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
- ★ C155 Occupational Safety and Health Convention, 1981 (No. 155)
- C161 Occupational Health Services Convention, 1985 (No. 161)
- C162 Asbestos Convention, 1986 (No. 162)
- C167 Safety and Health in Construction Convention, 1988 (No. 167)
- C170 Chemicals Convention, 1990 (No. 170)
- C174 Prevention of Major Industrial Accidents Convention, 1993 (No. 174)
- C176 Safety and Health in Mines Convention, 1995 (No. 176)
- C184 Safety and Health in Agriculture Convention, 2001 (No. 184)
- C187 Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- P155 Protocol of 2002 to the Occupational Safety and Health Convention, 1981

<b>13</b>	<b>Social security</b>	
★	C012	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
★	C017	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
★	C018	Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)
	C019	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
★	C024	Sickness Insurance (Industry) Convention, 1927 (No. 24)
★	C025	Sickness Insurance (Agriculture) Convention, 1927 (No. 25)
●	C035	Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)
●	C036	Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)
●	C037	Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)
●	C038	Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)
●	C039	Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39)
●	C040	Survivors' Insurance (Agriculture) Convention, 1933 (No. 40)
★	C042	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)
●	C044	Unemployment Provision Convention, 1934 (No. 44)
●	C048	Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)
★	C102	Social Security (Minimum Standards) Convention, 1952 (No. 102)
	C118	Equality of Treatment (Social Security) Convention, 1962 (No. 118)
	C121	Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
	C128	Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
	C130	Medical Care and Sickness Benefits Convention, 1969 (No. 130)
	C157	Maintenance of Social Security Rights Convention, 1982 (No. 157)
	C168	Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

<b>14</b>	<b>Maternity protection</b>	
★	C003	Maternity Protection Convention, 1919 (No. 3)
●	C103	Maternity Protection Convention (Revised), 1952 (No. 103)
	C183	Maternity Protection Convention, 2000 (No. 183)

<b>15</b>	<b>Social policy</b>	
★	C082	Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82)
	C117	Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)

<b>16</b>	<b>Migrant workers</b>	
	C021	Inspection of Emigrants Convention, 1926 (No. 21)
■	C066	Migration for Employment Convention, 1939 (No. 66)
	C097	Migration for Employment Convention (Revised), 1949 (No. 97)
	C143	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

17	Seafarers	
★	C007	Minimum Age (Sea) Convention, 1920 (No. 7)
★	C008	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
★	C009	Placing of Seamen Convention, 1920 (No. 9)
★	C016	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
★	C022	Seamen's Articles of Agreement Convention, 1926 (No. 22)
★	C023	Repatriation of Seamen Convention, 1926 (No. 23)
★	C053	Officers' Competency Certificates Convention, 1936 (No. 53)
★◆●	C054	Holidays with Pay (Sea) Convention, 1936 (No. 54)
★	C055	Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
★●	C056	Sickness Insurance (Sea) Convention, 1936 (No. 56)
★◆●	C057	Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
★	C058	Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
★	C068	Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
★	C069	Certification of Ships' Cooks Convention, 1946 (No. 69)
★◆●	C070	Social Security (Seafarers) Convention, 1946 (No. 70)
	C071	Seafarers' Pensions Convention, 1946 (No. 71)
★◆●	C072	Paid Vacations (Seafarers) Convention, 1946 (No. 72)
★	C073	Medical Examination (Seafarers) Convention, 1946 (No. 73)
★	C074	Certification of Able Seamen Convention, 1946 (No. 74)
★◆●	C075	Accommodation of Crews Convention, 1946 (No. 75)
★◆●	C076	Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
★●	C091	Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)
★	C092	Accommodation of Crews Convention (Revised), 1949 (No. 92)
★◆●	C093	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)
●	C108	Seafarers' Identity Documents Convention, 1958 (No. 108)
★◆●	C109	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
★	C133	Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
★	C134	Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
★	C145	Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
★	C146	Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
★	C147	Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
★	C163	Seafarers' Welfare Convention, 1987 (No. 163)
★	C164	Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
★	C165	Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
★	C166	Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
★	C178	Labour Inspection (Seafarers) Convention, 1996 (No. 178)
★	C179	Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
★	C180	Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
	C185	Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)
	MLC, 2006	Maritime Labour Convention, 2006 (MLC, 2006)
	P147	Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976

18	Fishers	
★	C112	Minimum Age (Fishermen) Convention, 1959 (No. 112)
	C113	Medical Examination (Fishermen) Convention, 1959 (No. 113)
	C114	Fishermen's Articles of Agreement Convention, 1959 (No. 114)
	C125	Fishermen's Competency Certificates Convention, 1966 (No. 125)
	C126	Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)
	C188	Work in Fishing Convention, 2007 (No. 188)

**19 Dockworkers**

- C027 Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)
- C028 Protection against Accidents (Dockers) Convention, 1929 (No. 28)
- C032 Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)
- C137 Dock Work Convention, 1973 (No. 137)
- C152 Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

**20 Indigenous and tribal peoples**

- C050 Recruiting of Indigenous Workers Convention, 1936 (No. 50)
- C064 Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)
- C065 Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)
- C086 Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)
- C104 Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)
- C107 Indigenous and Tribal Populations Convention, 1957 (No. 107)
- C169 Indigenous and Tribal Peoples Convention, 1989 (No. 169)

**21 Specific categories of workers**

- C083 Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83)
- ★ C110 Plantations Convention, 1958 (No. 110)
- C149 Nursing Personnel Convention, 1977 (No. 149)
- C172 Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
- C177 Home Work Convention, 1996 (No. 177)
- C189 Domestic Workers Convention, 2011 (No. 189)
- P110 Protocol of 1982 to the Plantations Convention, 1958

**22 Final Articles Conventions**

- C080 Final Articles Revision Convention, 1946 (No. 80)
- C116 Final Articles Revision Convention, 1961 (No. 116)

## Index of comments by Convention

<b>C001</b>			
	Haiti .....	521	
<b>C006</b>			
	Bolivarian Republic of Venezuela .....	331	
	Myanmar .....	298	
	Portugal .....	310	
<b>C008</b>			
	Saint Lucia .....	551	
<b>C014</b>			
	Haiti .....	521	
<b>C016</b>			
	Dominica .....	551	
<b>C017</b>			
	Suriname .....	537	
<b>C018</b>			
	Central African Republic .....	535	
<b>C019</b>			
	Peninsular Malaysia (Malaysia) .....	536	
	Sarawak (Malaysia) .....	536	
<b>C026</b>			
	Bolivarian Republic of Venezuela .....	518	
	Burundi .....	504	
<b>C029</b>			
	Austria .....	176	
	Bahrain .....	178	
	Bangladesh .....	180	
	Belarus .....	182	
	Burkina Faso .....	186	
	Burundi .....	186	
	Cambodia .....	187	
	Central African Republic .....	190	
	Chad .....	191	
	Congo .....	193	
	Democratic Republic of the Congo .....	193	
	Dominica .....	195	
	Egypt .....	195	
	Eritrea .....	198	
	Guyana .....	201	
	Lebanon .....	202	
	Mauritania .....	204	
	Pakistan .....	206	
	Peru .....	209	
	Poland .....	210	
	Sierra Leone .....	212	
	Sri Lanka .....	213	
	Sudan .....	214	
	Syrian Arab Republic .....	216	
	Thailand .....	217	
	Turkey .....	222	
	United Republic of Tanzania .....	217	
<b>C030</b>			
	Haiti .....	521	
<b>C042</b>			
	Suriname .....	537	
<b>C077</b>			
	Comoros .....	266	
	Lebanon .....	291	
	Paraguay .....	309	
<b>C078</b>			
	Comoros .....	266	
	Lebanon .....	292	
	Paraguay .....	309	
<b>C079</b>			
	Paraguay .....	310	
<b>C081</b>			
	Albania .....	433	
	Bahrain .....	434	
	Bangladesh .....	435	
	Benin .....	437	
	Burundi .....	437	
	Guatemala .....	438	
	India .....	439	
	Japan .....	441	
	Mauritania .....	442	
	Netherlands .....	446	
	Pakistan .....	447	
	Portugal .....	449	
	Qatar .....	450	
	Republic of Moldova .....	443	
	Ukraine .....	453	
<b>C087</b>			
	Algeria .....	43	
	Bangladesh .....	45	
	Belize .....	55	
	Bolivarian Republic of Venezuela .....	167	
	Botswana .....	56	
	Cambodia .....	60	
	Central African Republic .....	64	
	Congo .....	70	
	Democratic Republic of the Congo .....	71	
	Djibouti .....	72	
	Ecuador .....	73	
	Egypt .....	78	
	Equatorial Guinea .....	81	
	Eritrea .....	82	
	Gabon .....	83	
	Gambia .....	84	
	Georgia .....	85	
	Germany .....	86	
	Greece .....	90	
	Guatemala .....	91	
	Guinea .....	99	
	Haiti .....	101	
	Honduras .....	102	
	Hungary .....	106	
	Indonesia .....	109	
	Jamaica .....	112	
	Japan .....	113	
	Kazakhstan .....	118	
	Kuwait .....	121	
	Lesotho .....	124	
	Liberia .....	126	
	Macau Special Administrative Region (China) ...	67	
	Madagascar .....	128	
	Malawi .....	131	
	Malta .....	134	
	Mauritania .....	136	

Mauritius .....	137	Brazil.....	59
Mexico .....	140	Central African Republic.....	65
Mozambique.....	143	Comoros .....	69
Myanmar .....	144	Croatia .....	70
Namibia .....	145	Democratic Republic of the Congo .....	71
Nicaragua .....	149	Ecuador.....	76
Niger .....	150	El Salvador .....	80
Nigeria.....	151	Equatorial Guinea.....	82
Rwanda.....	157	Eritrea .....	83
Saint Lucia .....	158	Gambia .....	84
Somalia.....	159	Georgia .....	85
Syrian Arab Republic .....	160	Germany .....	88
Yemen .....	170	Ghana .....	89
<b>C088</b>		Greece.....	90
Angola.....	457	Guatemala.....	95
Bolivarian Republic of Venezuela .....	489	Guinea-Bissau .....	100
Nigeria.....	480	Guyana.....	100
Sierra Leone .....	483	Haiti .....	101
Spain .....	483	Honduras .....	104
<b>C090</b>		Hungary .....	108
Paraguay .....	310	Indonesia .....	110
<b>C094</b>		Iraq .....	111
Algeria.....	503	Ireland.....	112
Bermuda (United Kingdom).....	517	Jamaica .....	113
Bulgaria .....	504	Japan.....	115
Burundi.....	505	Jordan .....	116
Cameroon .....	505	Kazakhstan .....	120
Central African Republic .....	506	Kiribati.....	121
Costa Rica .....	506	Kuwait .....	123
Democratic Republic of the Congo .....	507	Lesotho .....	125
Djibouti .....	507	Liberia .....	127
Dominica.....	508	Macau Special Administrative Region (China) ...	67
Egypt .....	508	Madagascar.....	129
France.....	508	Malaysia .....	131
Ghana .....	509	Mali .....	133
Guinea .....	510	Malta.....	134
Iraq .....	510	Mauritius .....	137
Jamaica .....	510	Montenegro .....	142
Mauritius .....	511	Mozambique .....	144
Netherlands .....	512	Namibia .....	145
Norway.....	512	Nepal .....	146
Panama.....	513	Netherlands.....	148
Philippines.....	513	Nicaragua.....	150
Rwanda.....	514	Niger .....	150
Spain .....	515	Nigeria .....	153
Suriname .....	516	Pakistan .....	154
United Republic of Tanzania.....	516	Russian Federation .....	156
Yemen .....	520	Saint Lucia.....	158
<b>C095</b>		Sierra Leone .....	159
Bolivarian Republic of Venezuela .....	518	Somalia .....	159
<b>C097</b>		Turkey .....	161
Barbados.....	543	Yemen .....	171
France.....	544	Zambia .....	172
Israel.....	544	<b>C100</b>	
Nigeria.....	548	Algeria .....	337
Sabah (Malaysia).....	546	Bahamas .....	342
<b>C098</b>		Barbados .....	349
Angola.....	44	Belgium .....	350
Bangladesh.....	50	Bolivarian Republic of Venezuela.....	408
Barbados.....	55	Botswana .....	352
Belize .....	55	Burundi.....	353
Botswana.....	58	Canada .....	356

Congo.....	360	Belgium.....	351
Ethiopia.....	362	Bolivarian Republic of Venezuela.....	409
France.....	364	Brazil.....	352
Gabon.....	367	Burundi.....	354
Georgia.....	369	Canada.....	357
Iceland.....	372	Central African Republic.....	358
India.....	373	Congo.....	360
Islamic Republic of Iran.....	375	Equatorial Guinea.....	361
Israel.....	379	Ethiopia.....	362
Jamaica.....	381	France.....	365
Japan.....	381	Gabon.....	367
Jordan.....	386	Gambia.....	368
Latvia.....	387	Georgia.....	370
Lebanon.....	388	Hungary.....	372
Malaysia.....	390	Iceland.....	373
Mali.....	390	India.....	373
Mongolia.....	391	Islamic Republic of Iran.....	376
Montenegro.....	391	Italy.....	379
Netherlands.....	392	Latvia.....	387
New Zealand.....	396	Liberia.....	389
Pakistan.....	399	Luxembourg.....	389
Republic of Korea.....	386	Mali.....	390
Russian Federation.....	401	Mongolia.....	391
Rwanda.....	402	Netherlands.....	393
Saint Lucia.....	402	New Zealand.....	397
Saint Vincent and the Grenadines.....	403	Pakistan.....	400
Senegal.....	403	Rwanda.....	402
Trinidad and Tobago.....	406	South Africa.....	404
Tunisia.....	407	The former Yugoslav Republic of Macedonia.....	405
Viet Nam.....	410	Trinidad and Tobago.....	406
<b>C105</b>		Tunisia.....	407
Angola.....	175	Viet Nam.....	411
Azerbaijan.....	176	Yemen.....	413
Bahrain.....	179	<b>C112</b>	
Bangladesh.....	181	Liberia.....	554
Belarus.....	184	<b>C113</b>	
Belize.....	185	Azerbaijan.....	553
Benin.....	185	Liberia.....	554
Burundi.....	187	<b>C114</b>	
Cambodia.....	188	Liberia.....	554
Cameroon.....	190	Mauritania.....	555
Democratic Republic of the Congo.....	194	<b>C115</b>	
Egypt.....	196	Barbados.....	524
Eritrea.....	199	Japan.....	531
Fiji.....	201	<b>C118</b>	
Hong Kong Special Administrative Region (China).....	192	Central African Republic.....	535
Kenya.....	202	Egypt.....	535
Pakistan.....	208	Suriname.....	538
Rwanda.....	212	<b>C120</b>	
Sudan.....	215	Algeria.....	523
Syrian Arab Republic.....	216	<b>C122</b>	
Thailand.....	221	Algeria.....	457
Uganda.....	223	Australia.....	459
United States.....	225	Bolivarian Republic of Venezuela.....	490
<b>C106</b>		Cameroon.....	460
Haiti.....	521	China.....	461
<b>C111</b>		Comoros.....	463
Algeria.....	338	Czech Republic.....	463
Australia.....	339	Djibouti.....	465
Bahrain.....	344	Dominican Republic.....	465
Barbados.....	349	India.....	467
		Ireland.....	468

Japan .....	469	Nigeria .....	301
Libya .....	475	Pakistan .....	304
Madagascar .....	476	Papua New Guinea .....	307
Mozambique .....	477	Plurinational State of Bolivia .....	242
New Zealand .....	478	Samoa .....	311
Republic of Korea .....	472	Sierra Leone .....	313
Spain .....	485	Sri Lanka .....	315
Uganda .....	487	Sudan .....	317
<b>C123</b>		Swaziland .....	319
Nigeria .....	301	Syrian Arab Republic .....	321
<b>C124</b>		Thailand .....	323
Madagascar .....	296	Trinidad and Tobago .....	325
<b>C125</b>		Turkey .....	327
Sierra Leone .....	555	Uganda .....	329
Trinidad and Tobago .....	556	Yemen .....	331
<b>C126</b>		Zambia .....	333
Azerbaijan .....	553	<b>C139</b>	
<b>C129</b>		Brazil .....	526
Albania .....	433	<b>C142</b>	
Guatemala .....	438	Portugal .....	493
Netherlands .....	446	<b>C143</b>	
Portugal .....	449	Albania .....	543
Republic of Moldova .....	443	Bolivarian Republic of Venezuela .....	548
Ukraine .....	453	Italy .....	545
<b>C131</b>		Kenya .....	546
Plurinational State of Bolivia .....	503	<b>C144</b>	
<b>C135</b>		Antigua and Barbuda .....	415
Turkey .....	165	Bangladesh .....	415
<b>C137</b>		Burundi .....	416
Italy .....	557	Chad .....	416
Norway .....	557	Costa Rica .....	418
<b>C138</b>		Côte d'Ivoire .....	419
Afghanistan .....	229	Democratic Republic of the Congo .....	419
Algeria .....	232	Djibouti .....	419
Antigua and Barbuda .....	236	Dominican Republic .....	420
Argentina .....	237	El Salvador .....	421
Azerbaijan .....	238	Hong Kong Special Administrative Region (China) .....	417
Bahamas .....	238	Malawi .....	423
Belgium .....	242	New Caledonia (France) .....	422
Bosnia and Herzegovina .....	245	Nigeria .....	423
Burkina Faso .....	247	Peru .....	423
Burundi .....	249	Poland .....	424
Cambodia .....	251	Portugal .....	425
Cameroon .....	254	Serbia .....	426
Central African Republic .....	256	Sierra Leone .....	426
Chile .....	260	Spain .....	427
China .....	261	Suriname .....	427
Colombia .....	263	Swaziland .....	428
Comoros .....	267	Turkey .....	429
Congo .....	268	Uganda .....	429
Democratic Republic of the Congo .....	270	United Kingdom .....	430
Djibouti .....	275	United Republic of Tanzania .....	428
Dominica .....	277	<b>C147</b>	
Dominican Republic .....	277	Dominica .....	551
Egypt .....	280	<b>C148</b>	
Eritrea .....	283	Azerbaijan .....	524
Guinea .....	286	<b>C151</b>	
Guyana .....	287	Chad .....	66
Kyrgyzstan .....	290	<b>C155</b>	
Lao People's Democratic Republic .....	291	Algeria .....	523
Lebanon .....	293	Cabo Verde .....	527
Nicaragua .....	299		

Mexico .....	533	Djibouti.....	276
<b>C156</b>		Dominican Republic.....	279
Australia.....	341	Egypt .....	281
Croatia.....	361	El Salvador .....	282
Ethiopia.....	363	Fiji .....	284
Japan .....	384	Ghana .....	285
Netherlands .....	394	Haiti.....	288
Norway.....	398	Lebanon.....	295
<b>C158</b>		Macau Special Administrative Region (China)...	263
Australia.....	495	Malawi.....	297
Bolivarian Republic of Venezuela .....	500	Nicaragua .....	299
Cameroon.....	496	Pakistan .....	305
Democratic Republic of the Congo .....	497	Papua New Guinea .....	308
Papua New Guinea.....	497	Plurinational State of Bolivia .....	244
Portugal.....	498	Saint Vincent and the Grenadines .....	311
Sweden.....	499	Samoa.....	312
<b>C159</b>		Sri Lanka .....	316
Japan .....	470	Sudan.....	317
Peru.....	481	Syrian Arab Republic .....	321
Sao Tome and Principe .....	482	The former Yugoslav Republic of Macedonia ...	324
<b>C160</b>		Trinidad and Tobago .....	325
San Marino.....	452	Tunisia.....	326
<b>C161</b>		Turkey .....	327
Chile.....	528	Uganda .....	329
<b>C162</b>		Yemen .....	332
Bosnia and Herzegovina .....	524	<b>C187</b>	
Canada.....	527	Chile.....	528
Colombia.....	529	<b>General observations</b>	
Portugal.....	534	Belize.....	39
<b>C167</b>		Comoros .....	39
Algeria.....	523	Congo .....	40
<b>C168</b>		Cook Islands.....	40
Sweden.....	538	Dominica.....	40
<b>C169</b>		Equatorial Guinea.....	40
Paraguay.....	559	Gabon .....	40
Peru.....	561	Gambia .....	40
<b>C170</b>		Guinea-Bissau .....	40
Colombia.....	529	Guyana .....	40
<b>C174</b>		Haiti.....	40
Colombia.....	529	Nicaragua .....	41
<b>C176</b>		Republic of Maldives .....	41
Botswana.....	525	Sabah (Malaysia).....	41
<b>C182</b>		Saint Lucia.....	41
Afghanistan .....	230	Saint Vincent and the Grenadines .....	41
Albania.....	231	Serbia.....	41
Algeria.....	234	Solomon Islands .....	41
Angola.....	235	Somalia.....	41
Argentina.....	237	Timor-Leste.....	42
Bahamas.....	239	Vanuatu .....	42
Bangladesh.....	240	Viet Nam .....	42
Botswana.....	246	Yemen .....	42
Burkina Faso .....	247	<b>Submission to the competent authorities</b>	
Burundi .....	250	General observation.....	567
Cambodia .....	252	Afghanistan .....	568
Cameroon.....	254	Albania .....	568
Central African Republic .....	257	Angola .....	569
Chad.....	258	Antigua and Barbuda.....	569
China.....	262	Azerbaijan .....	569
Colombia.....	264	Bahamas .....	569
Congo.....	268	Bahrain .....	569
Costa Rica .....	269	Bangladesh .....	570
Democratic Republic of the Congo .....	271	Belize.....	570

Brunei Darussalam .....	570	Liberia .....	576
Burkina Faso .....	570	Libya.....	576
Burundi.....	570	Malawi.....	576
Central African Republic .....	571	Malaysia .....	576
Chad .....	571	Malta.....	577
Chile .....	571	Mozambique .....	577
Comoros .....	571	Pakistan .....	577
Congo .....	571	Papua New Guinea .....	577
Croatia.....	571	Plurinational State of Bolivia .....	570
Democratic Republic of the Congo .....	571	Republic of Maldives .....	576
Dominica .....	572	Republic of Moldova .....	577
El Salvador .....	572	Rwanda .....	577
Equatorial Guinea.....	572	Saint Kitts and Nevis .....	578
Fiji.....	572	Saint Lucia.....	578
Gabon.....	572	Saint Vincent and the Grenadines.....	578
Gambia.....	573	Samoa .....	578
Grenada .....	573	Seychelles.....	578
Guinea.....	573	Sierra Leone .....	579
Guinea-Bissau .....	573	Solomon Islands .....	579
Haiti.....	573	Somalia .....	579
Hungary.....	574	Swaziland .....	579
Iraq .....	574	Syrian Arab Republic .....	579
Islamic Republic of Iran .....	574	The former Yugoslav Republic of Macedonia ....	580
Jamaica .....	574	Timor-Leste .....	580
Jordan.....	574	Togo .....	580
Kazakhstan .....	575	Tuvalu.....	580
Kiribati .....	575	United Arab Emirates .....	580
Kuwait.....	575	Vanuatu .....	581
Kyrgyzstan .....	575	Yemen .....	581
Lebanon.....	575	Zambia.....	581
Lesotho.....	576		

## Index of comments by country

<b>Afghanistan</b>			
C138.....	229		
C182.....	230		
Submission to the competent authorities.....	568		
<b>Albania</b>			
C081.....	433		
C129.....	433		
C143.....	543		
C182.....	231		
Submission to the competent authorities.....	568		
<b>Algeria</b>			
C087.....	43		
C094.....	503		
C100.....	337		
C111.....	338		
C120.....	523		
C122.....	457		
C138.....	232		
C155.....	523		
C167.....	523		
C182.....	234		
<b>Angola</b>			
C088.....	457		
C098.....	44		
C105.....	175		
C182.....	235		
Submission to the competent authorities.....	569		
<b>Antigua and Barbuda</b>			
C138.....	236		
C144.....	415		
Submission to the competent authorities.....	569		
<b>Argentina</b>			
C138.....	237		
C182.....	237		
<b>Australia</b>			
C111.....	339		
C122.....	459		
C156.....	341		
C158.....	495		
<b>Austria</b>			
C029.....	176		
<b>Azerbaijan</b>			
C105.....	176		
C113.....	553		
C126.....	553		
C138.....	238		
C148.....	524		
Submission to the competent authorities.....	569		
<b>Bahamas</b>			
C100.....	342		
C138.....	238		
C182.....	239		
Submission to the competent authorities.....	569		
<b>Bahrain</b>			
C029.....	178		
C081.....	434		
C105.....	179		
C111.....	344		
Submission to the competent authorities.....	569		
<b>Bangladesh</b>			
C029.....	180		
C081.....	435		
C087.....	45		
C098.....	50		
C105.....	181		
C144.....	415		
C182.....	240		
Submission to the competent authorities.....	570		
<b>Barbados</b>			
C097.....	543		
C098.....	55		
C100.....	349		
C111.....	349		
C115.....	524		
<b>Belarus</b>			
C029.....	182		
C105.....	184		
<b>Belgium</b>			
C100.....	350		
C111.....	351		
C138.....	242		
<b>Belize</b>			
C087.....	55		
C098.....	55		
C105.....	185		
General observation.....	39		
Submission to the competent authorities.....	570		
<b>Benin</b>			
C081.....	437		
C105.....	185		
<b>Bermuda (United Kingdom)</b>			
C094.....	517		
<b>Bolivarian Republic of Venezuela</b>			
C006.....	331		
C026.....	518		
C087.....	167		
C088.....	489		
C095.....	518		
C100.....	408		
C111.....	409		
C122.....	490		
C143.....	548		
C158.....	500		
<b>Bosnia and Herzegovina</b>			
C138.....	245		
C162.....	524		
<b>Botswana</b>			
C087.....	56		
C098.....	58		
C100.....	352		
C176.....	525		
C182.....	246		
<b>Brazil</b>			
C098.....	59		
C111.....	352		
C139.....	526		
<b>Brunei Darussalam</b>			
Submission to the competent authorities.....	570		

<b>Bulgaria</b>			
C094 .....	504		
<b>Burkina Faso</b>			
C029 .....	186		
C138 .....	247		
C182 .....	247		
Submission to the competent authorities .....	570		
<b>Burundi</b>			
C026 .....	504		
C029 .....	186		
C081 .....	437		
C094 .....	505		
C100 .....	353		
C105 .....	187		
C111 .....	354		
C138 .....	249		
C144 .....	416		
C182 .....	250		
Submission to the competent authorities .....	570		
<b>Cabo Verde</b>			
C155 .....	527		
<b>Cambodia</b>			
C029 .....	187		
C087 .....	60		
C105 .....	188		
C138 .....	251		
C182 .....	252		
<b>Cameroon</b>			
C094 .....	505		
C105 .....	190		
C122 .....	460		
C138 .....	254		
C158 .....	496		
C182 .....	254		
<b>Canada</b>			
C100 .....	356		
C111 .....	357		
C162 .....	527		
<b>Central African Republic</b>			
C018 .....	535		
C029 .....	190		
C087 .....	64		
C094 .....	506		
C098 .....	65		
C111 .....	358		
C118 .....	535		
C138 .....	256		
C182 .....	257		
Submission to the competent authorities .....	571		
<b>Chad</b>			
C029 .....	191		
C144 .....	416		
C151 .....	66		
C182 .....	258		
Submission to the competent authorities .....	571		
<b>Chile</b>			
C138 .....	260		
C161 .....	528		
C187 .....	528		
Submission to the competent authorities .....	571		
<b>China</b>			
C122 .....	461		
C138 .....	261		
C182 .....	262		
<b>Colombia</b>			
C138 .....	263		
C162 .....	529		
C170 .....	529		
C174 .....	529		
C182 .....	264		
<b>Comoros</b>			
C077 .....	266		
C078 .....	266		
C098 .....	69		
C122 .....	463		
C138 .....	267		
General observation .....	39		
Submission to the competent authorities .....	571		
<b>Congo</b>			
C029 .....	193		
C087 .....	70		
C100 .....	360		
C111 .....	360		
C138 .....	268		
C182 .....	268		
General observation .....	40		
Submission to the competent authorities .....	571		
<b>Cook Islands</b>			
General observation .....	40		
<b>Costa Rica</b>			
C094 .....	506		
C144 .....	418		
C182 .....	269		
<b>Côte d'Ivoire</b>			
C144 .....	419		
<b>Croatia</b>			
C098 .....	70		
C156 .....	361		
Submission to the competent authorities .....	571		
<b>Czech Republic</b>			
C122 .....	463		
<b>Democratic Republic of the Congo</b>			
C029 .....	193		
C087 .....	71		
C094 .....	507		
C098 .....	71		
C105 .....	194		
C138 .....	270		
C144 .....	419		
C158 .....	497		
C182 .....	271		
Submission to the competent authorities .....	571		
<b>Djibouti</b>			
C087 .....	72		
C094 .....	507		
C122 .....	465		
C138 .....	275		
C144 .....	419		
C182 .....	276		
<b>Dominica</b>			
C016 .....	551		
C029 .....	195		
C094 .....	508		
C138 .....	277		

C147.....	551	<b>Georgia</b>	
General observation .....	40	C087 .....	85
Submission to the competent authorities.....	572	C098 .....	85
<b>Dominican Republic</b>		C100 .....	369
C122.....	465	C111 .....	370
C138.....	277	<b>Germany</b>	
C144.....	420	C087 .....	86
C182.....	279	C098 .....	88
<b>Ecuador</b>		<b>Ghana</b>	
C087.....	73	C094.....	509
C098.....	76	C098.....	89
<b>Egypt</b>		C182.....	285
C029.....	195	<b>Greece</b>	
C087.....	78	C087.....	90
C094.....	508	C098.....	90
C105.....	196	<b>Grenada</b>	
C118.....	535	Submission to the competent authorities .....	573
C138.....	280	<b>Guatemala</b>	
C182.....	281	C081 .....	438
<b>El Salvador</b>		C087.....	91
C098.....	80	C098.....	95
C144.....	421	C129.....	438
C182.....	282	<b>Guinea</b>	
Submission to the competent authorities.....	572	C087 .....	99
<b>Equatorial Guinea</b>		C094.....	510
C087.....	81	C138.....	286
C098.....	82	Submission to the competent authorities .....	573
C111.....	361	<b>Guinea-Bissau</b>	
General observation .....	40	C098.....	100
Submission to the competent authorities.....	572	General observation.....	40
<b>Eritrea</b>		Submission to the competent authorities .....	573
C029.....	198	<b>Guyana</b>	
C087.....	82	C029.....	201
C098.....	83	C098.....	100
C105.....	199	C138.....	287
C138.....	283	General observation.....	40
<b>Ethiopia</b>		<b>Haiti</b>	
C100.....	362	C001 .....	521
C111.....	362	C014.....	521
C156.....	363	C030.....	521
<b>Fiji</b>		C087.....	101
C105.....	201	C098.....	101
C182.....	284	C106.....	521
Submission to the competent authorities.....	572	C182.....	288
<b>France</b>		General observation.....	40
C094.....	508	Submission to the competent authorities .....	573
C097.....	544	<b>Honduras</b>	
C100.....	364	C087 .....	102
C111.....	365	C098.....	104
<b>Gabon</b>		<b>Hong Kong Special Administrative Region (China)</b>	
C087.....	83	C105.....	192
C100.....	367	C144.....	417
C111.....	367	<b>Hungary</b>	
General observation .....	40	C087.....	106
Submission to the competent authorities.....	572	C098.....	108
<b>Gambia</b>		C111.....	372
C087.....	84	Submission to the competent authorities .....	574
C098.....	84	<b>Iceland</b>	
C111.....	368	C100.....	372
General observation .....	40	C111.....	373
Submission to the competent authorities.....	573	<b>India</b>	
		C081 .....	439

C100 .....	373	<b>Latvia</b>	
C111 .....	373	C100 .....	387
C122 .....	467	C111 .....	387
<b>Indonesia</b>		<b>Lebanon</b>	
C087 .....	109	C029 .....	202
C098 .....	110	C077 .....	291
<b>Iraq</b>		C078 .....	292
C094 .....	510	C100 .....	388
C098 .....	111	C138 .....	293
Submission to the competent authorities .....	574	C182 .....	295
<b>Ireland</b>		Submission to the competent authorities .....	575
C098 .....	112	<b>Lesotho</b>	
C122 .....	468	C087 .....	124
<b>Islamic Republic of Iran</b>		C098 .....	125
C100 .....	375	Submission to the competent authorities .....	576
C111 .....	376	<b>Liberia</b>	
Submission to the competent authorities .....	574	C087 .....	126
<b>Israel</b>		C098 .....	127
C097 .....	544	C111 .....	389
C100 .....	379	C112 .....	554
<b>Italy</b>		C113 .....	554
C111 .....	379	C114 .....	554
C137 .....	557	Submission to the competent authorities .....	576
C143 .....	545	<b>Libya</b>	
<b>Jamaica</b>		C122 .....	475
C087 .....	112	Submission to the competent authorities .....	576
C094 .....	510	<b>Luxembourg</b>	
C098 .....	113	C111 .....	389
C100 .....	381	<b>Macau Special Administrative Region (China)</b>	
Submission to the competent authorities .....	574	C087 .....	67
<b>Japan</b>		C098 .....	67
C081 .....	441	C182 .....	263
C087 .....	113	<b>Madagascar</b>	
C098 .....	115	C087 .....	128
C100 .....	381	C098 .....	129
C115 .....	531	C122 .....	476
C122 .....	469	C124 .....	296
C156 .....	384	<b>Malawi</b>	
C159 .....	470	C087 .....	131
<b>Jordan</b>		C144 .....	423
C098 .....	116	C182 .....	297
C100 .....	386	Submission to the competent authorities .....	576
Submission to the competent authorities .....	574	<b>Malaysia</b>	
<b>Kazakhstan</b>		C098 .....	131
C087 .....	118	C100 .....	390
C098 .....	120	Submission to the competent authorities .....	576
Submission to the competent authorities .....	575	<b>Mali</b>	
<b>Kenya</b>		C098 .....	133
C105 .....	202	C100 .....	390
C143 .....	546	C111 .....	390
<b>Kiribati</b>		<b>Malta</b>	
C098 .....	121	C087 .....	134
Submission to the competent authorities .....	575	C098 .....	134
<b>Kuwait</b>		Submission to the competent authorities .....	577
C087 .....	121	<b>Mauritania</b>	
C098 .....	123	C029 .....	204
Submission to the competent authorities .....	575	C081 .....	442
<b>Kyrgyzstan</b>		C087 .....	136
C138 .....	290	C114 .....	555
Submission to the competent authorities .....	575	<b>Mauritius</b>	
<b>Lao People's Democratic Republic</b>		C087 .....	137
C138 .....	291	C094 .....	511

C098.....	137	C100.....	399
<b>Mexico</b>		C105.....	208
C087.....	140	C111.....	400
C155.....	533	C138.....	304
<b>Mongolia</b>		C182.....	305
C100.....	391	Submission to the competent authorities.....	577
C111.....	391	<b>Panama</b>	
<b>Montenegro</b>		C094.....	513
C098.....	142	<b>Papua New Guinea</b>	
C100.....	391	C138.....	307
<b>Mozambique</b>		C158.....	497
C087.....	143	C182.....	308
C098.....	144	Submission to the competent authorities.....	577
C122.....	477	<b>Paraguay</b>	
Submission to the competent authorities.....	577	C077.....	309
<b>Myanmar</b>		C078.....	309
C006.....	298	C079.....	310
C087.....	144	C090.....	310
<b>Namibia</b>		C169.....	559
C087.....	145	<b>Peninsular Malaysia (Malaysia)</b>	
C098.....	145	C019.....	536
<b>Nepal</b>		<b>Peru</b>	
C098.....	146	C029.....	209
<b>Netherlands</b>		C144.....	423
C081.....	446	C159.....	481
C094.....	512	C169.....	561
C098.....	148	<b>Philippines</b>	
C100.....	392	C094.....	513
C111.....	393	<b>Plurinational State of Bolivia</b>	
C129.....	446	C131.....	503
C156.....	394	C138.....	242
<b>New Caledonia (France)</b>		C182.....	244
C144.....	422	Submission to the competent authorities.....	570
<b>New Zealand</b>		<b>Poland</b>	
C100.....	396	C029.....	210
C111.....	397	C144.....	424
C122.....	478	<b>Portugal</b>	
<b>Nicaragua</b>		C006.....	310
C087.....	149	C081.....	449
C098.....	150	C129.....	449
C138.....	299	C142.....	493
C182.....	299	C144.....	425
General observation.....	41	C158.....	498
<b>Niger</b>		C162.....	534
C087.....	150	<b>Qatar</b>	
C098.....	150	C081.....	450
<b>Nigeria</b>		<b>Republic of Korea</b>	
C087.....	151	C100.....	386
C088.....	480	C122.....	472
C097.....	548	<b>Republic of Maldives</b>	
C098.....	153	General observation.....	41
C123.....	301	Submission to the competent authorities.....	576
C138.....	301	<b>Republic of Moldova</b>	
C144.....	423	C081.....	443
<b>Norway</b>		C129.....	443
C094.....	512	Submission to the competent authorities.....	577
C137.....	557	<b>Russian Federation</b>	
C156.....	398	C098.....	156
<b>Pakistan</b>		C100.....	401
C029.....	206	<b>Rwanda</b>	
C081.....	447	C087.....	157
C098.....	154	C094.....	514

C100 .....	402	<b>Sri Lanka</b>	
C105 .....	212	C029 .....	213
C111 .....	402	C138 .....	315
Submission to the competent authorities .....	577	C182 .....	316
<b>Sabah (Malaysia)</b>		<b>Sudan</b>	
C097 .....	546	C029 .....	214
General observation .....	41	C105 .....	215
<b>Saint Kitts and Nevis</b>		C138 .....	317
Submission to the competent authorities .....	578	C182 .....	317
<b>Saint Lucia</b>		<b>Suriname</b>	
C008 .....	551	C017 .....	537
C087 .....	158	C042 .....	537
C098 .....	158	C094 .....	516
C100 .....	402	C118 .....	538
General observation .....	41	C144 .....	427
Submission to the competent authorities .....	578	<b>Swaziland</b>	
<b>Saint Vincent and the Grenadines</b>		C138 .....	319
C100 .....	403	C144 .....	428
C182 .....	311	Submission to the competent authorities .....	579
General observation .....	41	<b>Sweden</b>	
Submission to the competent authorities .....	578	C158 .....	499
<b>Samoa</b>		C168 .....	538
C138 .....	311	<b>Syrian Arab Republic</b>	
C182 .....	312	C029 .....	216
Submission to the competent authorities .....	578	C087 .....	160
<b>San Marino</b>		C105 .....	216
C160 .....	452	C138 .....	321
<b>Sao Tome and Principe</b>		C182 .....	321
C159 .....	482	Submission to the competent authorities .....	579
<b>Sarawak (Malaysia)</b>		<b>Thailand</b>	
C019 .....	536	C029 .....	217
<b>Senegal</b>		C105 .....	221
C100 .....	403	C138 .....	323
<b>Serbia</b>		<b>The former Yugoslav Republic of Macedonia</b>	
C144 .....	426	C111 .....	405
General observation .....	41	C182 .....	324
<b>Seychelles</b>		Submission to the competent authorities .....	580
Submission to the competent authorities .....	578	<b>Timor-Leste</b>	
<b>Sierra Leone</b>		General observation .....	42
C029 .....	212	Submission to the competent authorities .....	580
C088 .....	483	<b>Togo</b>	
C098 .....	159	Submission to the competent authorities .....	580
C125 .....	555	<b>Trinidad and Tobago</b>	
C138 .....	313	C100 .....	406
C144 .....	426	C111 .....	406
Submission to the competent authorities .....	579	C125 .....	556
<b>Solomon Islands</b>		C138 .....	325
General observation .....	41	C182 .....	325
Submission to the competent authorities .....	579	<b>Tunisia</b>	
<b>Somalia</b>		C100 .....	407
C087 .....	159	C111 .....	407
C098 .....	159	C182 .....	326
General observation .....	41	<b>Turkey</b>	
Submission to the competent authorities .....	579	C029 .....	222
<b>South Africa</b>		C098 .....	161
C111 .....	404	C135 .....	165
<b>Spain</b>		C138 .....	327
C088 .....	483	C144 .....	429
C094 .....	515	C182 .....	327
C122 .....	485	<b>Tuvalu</b>	
C144 .....	427	Submission to the competent authorities .....	580

<b>Uganda</b>			
C105.....	223		
C122.....	487		
C138.....	329		
C144.....	429		
C182.....	329		
<b>Ukraine</b>			
C081.....	453		
C129.....	453		
<b>United Arab Emirates</b>			
Submission to the competent authorities.....	580		
<b>United Kingdom</b>			
C144.....	430		
<b>United Republic of Tanzania</b>			
C029.....	217		
C094.....	516		
C144.....	428		
<b>United States</b>			
C105.....	225		
		<b>Vanuatu</b>	
		General observation.....	42
		Submission to the competent authorities.....	581
		<b>Viet Nam</b>	
		C100.....	410
		C111.....	411
		General observation.....	42
		<b>Yemen</b>	
		C087.....	170
		C094.....	520
		C098.....	171
		C111.....	413
		C138.....	331
		C182.....	332
		General observation.....	42
		Submission to the competent authorities.....	581
		<b>Zambia</b>	
		C098.....	172
		C138.....	333
		Submission to the competent authorities.....	581

## Reader's note

### Overview of the ILO supervisory mechanisms

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

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

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

### Role of employers' and workers' organizations

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

In practice, representative employers' and workers' organizations may submit to their governments' comments on the reports concerning the application of international labour standards. They may, for instance, draw attention to a discrepancy in law or practice regarding the application of a ratified Convention. Furthermore, any employers' or workers' organization may submit comments on the application of international labour standards directly to the Office. The Office will then forward these comments to the government concerned, which will have an opportunity to respond before the comments are examined by the Committee of Experts.<sup>3</sup>

<sup>1</sup> For detailed information on all the supervisory procedures, see the *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, International Labour Office, Geneva, Rev., 2012.

<sup>2</sup> Reports are requested every three years for the fundamental Conventions and governance Conventions, and every five years for other Conventions. Reports are due for groups of Conventions according to subject matter.

<sup>3</sup> See paras 63–69 of the General Report.

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

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary sitting of the Conference would not be able to examine all of these reports at the same time as adopting standards and discussing other important matters. In response to this situation, the Conference in 1926 adopted a resolution<sup>4</sup> establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO supervisory system.

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

### **Composition**

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

### **Work of the Committee**

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

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

The task of the Committee of Experts is to indicate the extent to which each member State's legislation and practice are in conformity with ratified Conventions and the extent to which member States have fulfilled their obligations under the ILO Constitution in relation to standards. In carrying out this task, the Committee adheres to its principles of independence, objectivity and impartiality.<sup>7</sup> The comments of the Committee of Experts on the fulfilment by member States of their standards-related obligations take the form of either observations or direct requests. Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They are reproduced in the annual report of the Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests are not published in the report of the Committee of Experts, but are communicated directly to the government concerned and are available online.<sup>8</sup> In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given

<sup>4</sup> Appendix VII, *Record of Proceedings* of the Eighth Session of the International Labour Conference, 1926, Vol. 1.

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

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

<sup>7</sup> See para. 19 of the General Report.

<sup>8</sup> See para. 41 of the General Report. Observations and direct requests are accessible through the NORMLEX database available at: [www.ilo.org/normes](http://www.ilo.org/normes).

number of Conventions and Recommendations chosen by the Governing Body.<sup>9</sup> The General Survey is based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all member States regardless of whether or not they have ratified the concerned Conventions. This year's General Survey covers the instruments concerning working time.

## Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The report consists of two volumes.

The first volume (Report III (Part A))<sup>10</sup> is divided into two parts:

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

The second volume contains the **General Survey** (Report III (Part B)).

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

### Composition

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

### Work of the Committee

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

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

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

Following the independent technical examination carried out by the Committee of Experts, the proceedings of the Conference Committee on the Application of Standards provide an opportunity for the representatives of governments, employers and workers to examine together the manner in which States are fulfilling their standards-related obligations. Governments are able to elaborate on information previously supplied to the Committee of Experts, indicate any further measures taken or proposed since the last session of the Committee of Experts, draw attention to difficulties encountered in the fulfilment of obligations and seek guidance as to how to overcome such difficulties.

The Conference Committee on the Application of Standards discusses the report of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion based essentially on the General Report of the Committee of Experts. The Conference Committee then discusses the General Survey. It also examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee examines a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. At the end of the discussion of each individual case, the Conference Committee adopts conclusions on the case in question.

<sup>9</sup> By virtue of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee. In principle, the subjects of General Surveys have therefore been aligned with the four strategic objectives of the ILO. The importance of the coordination between the General Surveys and recurrent discussions has been reaffirmed in the context of the adoption of the new five-year cycle of recurrent discussions by the Governing Body in November 2016.

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

In its report <sup>11</sup> submitted to the plenary sitting of the Conference for adoption, the Conference Committee on the Application of Standards may invite the member State whose case has been discussed to accept a technical assistance mission by the International Labour Office to increase its capacity to fulfil its obligations, or may propose other types of missions. The Conference Committee may also request a government to submit additional information or address specific concerns in its next report to the Committee of Experts. The Conference Committee also draws the attention of the Conference to certain cases, such as cases of progress and cases of serious failure to comply with ratified Conventions.

### ***The Committee of Experts and the Conference Committee on the Application of Standards***

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

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<sup>11</sup> The report is published in the *Record of Proceedings* of the Conference. Since 2007, it has also been issued in a separate publication. See, for the last report, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, International Labour Conference, 106th Session, Geneva, 2017.

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***Part I. General Report***

## I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 88th Session in Geneva from 22 November to 9 December 2017. The Committee has the honour to present its report to the Governing Body.

### **Composition of the Committee**

2. The composition of the Committee is as follows: Mr Shinichi AGO (Japan), Ms Lia ATHANASSIOU (Greece), Ms Leila AZOURI (Lebanon), Mr Lelio BENTES CORRÊA (Brazil), Mr James J. BRUDNEY (United States), Mr Halton CHEADLE (South Africa), Ms Graciela Josefina DIXON CATON (Panama), Mr Rachid FILALI MEKNASSI (Morocco), Mr Abdul G. KOROMA (Sierra Leone), Mr Alain LACABARATS (France), Ms Elena E. MACHULSKAYA (Russian Federation), Ms Karon MONAGHAN (United Kingdom), Mr Vitit MUNTARBHORN (Thailand), Ms Rosemary OWENS (Australia), Ms Monica PINTO (Argentina), Mr Paul-Gérard POUGOUÉ (Cameroon), Mr Raymond RANJEVA (Madagascar), Ms Deborah THOMAS-FELIX (Trinidad and Tobago) and Mr Bernd WAAS (Germany). Appendix I of the General Report contains brief biographies of all the Committee members.

3. During its session, the Committee noted that Mr Ajit Prakash Shah (India) and Mr Mario Ackerman (Argentina) had submitted their resignation from the Committee earlier in 2017. Moreover, Mr Cheadle and Ms Dixon Caton were unable to attend this session. The Committee therefore functioned with a somewhat limited composition of 17 members.

4. Mr Koroma continued his mandate as Chairperson of the Committee and Ms Owens was elected as Reporter.

### **Working methods**

5. Consideration of its working methods by the Committee of Experts has been an ongoing process since its establishment. In this process, the Committee has always given due consideration to the views expressed by the tripartite constituents. In recent years, in its reflection on possible improvements and the strengthening of its working methods, the Committee of Experts directed its efforts towards identifying ways to adapt its working methods so as to perform its functions in the best and most efficient manner possible and, in so doing, assist member States in meeting their obligations in relation to international labour standards and enhance the functioning of the supervisory system.

6. In order to guide the Committee's reflection on continuous improvement of its working methods, a subcommittee on working methods was set up in 2001 with the mandate to examine the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee. This year, the subcommittee on working methods met for the 17th time under the guidance of Mr Bentes Corrêa, who was elected as its Chairperson. The subcommittee on working methods focused its discussions on two main issues: (i) possible improvements in the functioning of the subcommittee on the streamlining of the treatment of certain information; and (ii) the Governing Body discussions on the Standards Initiative and their possible implications for the work of the Committee.

7. The subcommittee on the streamlining of the treatment of certain information (which was established by the Committee of Experts in 2012 with a particular focus on information related to reporting obligations) also met this year, before the beginning of the work of the Committee. The subcommittee prepared draft "general" observations and direct requests addressing the failure to comply with the obligation to submit reports on the application of ratified Conventions

(articles 22 and 35 of the Constitution)<sup>1</sup> and the obligation to communicate copies of the reports on ratified Conventions to the representative organizations of employers and workers (article 23, paragraph 2, of the Constitution).<sup>2</sup> It also prepared the Committee's "repetitions" (an individual observation or direct request may be repeated when a report was due on the application of a ratified Convention, but no report has been received or the report received contained no reply to the Committee's previous comments). The subcommittee presented, for adoption in the plenary, its report to the Committee of Experts and drew attention to the most important issues which had been raised during its examination.

8. Possible improvements in the functioning of the subcommittee on the streamlining of the treatment of certain information were discussed by the subcommittee on working methods with a view to improving the quality and impact of repetitions by paying closer attention to certain serious cases of failure to report. The subcommittee on working methods discussed, *inter alia*, how the examination of these cases could also be drawn more specifically to the attention of the Committee on the Application of Standards when it discusses cases of serious failure to report so that both Committees could consider not only the failure to report but also the seriousness of the issues raised and the seriously detrimental impact the non-reporting is having on the function of the supervisory bodies aimed at facilitating progress on serious substantive matters.

9. Based on the discussion which took place at the subcommittee on working methods, the Committee of Experts decided to institute a practice of launching "urgent appeals" in cases corresponding to the following criteria:

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

10. In such cases, the Committee might inform the governments concerned, in an opening paragraph to the repetition, that if they have not supplied a first report or answers to the points raised by 1 September of the following year, then it might proceed with the examination of these cases on the basis of the information at its disposal and possibly make a new comment at its next session. In these cases, the Committee on the Application of Standards may also have its attention drawn to the serious reporting failure, so that governments can be called before it and thus advised that, in the absence of a report, the Committee of Experts might examine the substance of the matter at its next session. The Committee hopes that this may further reinforce the synergies between the two supervisory bodies. As a result of this decision and the new working methods it would imply, the Committee of Experts decided to discontinue the subcommittee on the streamlining of the treatment of certain information.

11. The subcommittee on working methods also discussed the possible implications of the Governing Body discussions on the Standards Initiative for the working methods of the Committee of Experts. The subcommittee generally welcomed the discussions taking place at the Governing Body on ways to strengthen the impact of the supervisory mechanism which coincided with its own discussions on working methods. It considered that the Governing Body discussions on the thematic grouping of Conventions for reporting purposes and the practice of consolidated comments, previously developed by the Committee of Experts, was a positive development.

12. The subcommittee drew the Committee's attention to the Governing Body's consideration of extending the reporting cycle for technical Conventions from five to six years. In this regard, the Committee indicated its willingness to consider the manner in which it might broaden the very strict criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations on a specific country under article 23, paragraph 2, of the ILO Constitution and decided that inspiration in this regard could be drawn from those criteria used for "footnoting" cases and set out in paragraph 47 of its General Report.<sup>3</sup>

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

13. A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the Committee on the Application of Standards of the International Labour Conference. In this context, the Committee once again welcomed the participation of its Chairperson in the general discussion of the Committee on the Application of Standards at the 106th Session of the International Labour Conference (June 2017). It noted the decision by the Conference Committee to request the Director-General to renew this invitation to the Chairperson of the Committee of Experts for the 107th Session (May–June 2018) of the Conference. The Committee of Experts accepted this invitation.

<sup>1</sup> See para. 27 of the General Report.

<sup>2</sup> See para. 31 of the General Report.

<sup>3</sup> The Committee indicates by special notes (traditionally known as "footnotes") at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session.

14. The Chairperson of the Committee of Experts invited the Employer Vice-Chairperson (Ms Sonia Regenbogen) and the Worker Vice-Chairperson (Mr Marc Leemans) to participate in a special sitting of the Committee at its present session. They both accepted this invitation. An interactive and thorough exchange of views took place on matters of common interest.

15. The Worker Vice-Chairperson congratulated the Committee for its work and expressed his appreciation for the technical quality of its report which provided a solid basis for the functioning of the Conference Committee and contributed to the credibility, legitimacy and authority of the entire supervisory mechanism. The clarification of the Committee's mandate in the introduction to its General Report continued to be useful in clarifying the distinct but complementary roles that the two Committees played in the supervisory system. In a constructive spirit, he shared some specific comments and questions. A number of issues had been shifted from observations to direct requests over the years without, in his view, being based on the helpful explanation in the General Report concerning the distinction between the two types of comments. In addition, some issues continued to be addressed in direct requests despite their long-standing nature, raising some questions about the criteria applied when qualifying an issue as long-standing in order to address it in an observation. In some cases, important issues had completely disappeared from the comment without clarity about whether they had been resolved in the meantime. Concerning the approach followed for the treatment of observations received from the social partners under article 23, paragraph 2, of the Constitution, he supported the Committee's approach not to address observations which did not fall within the scope of the Convention concerned or did not contain information that would add value to the examination of the application of the Convention in specific cases. However, when it came to allegations submitted by trade unions, the Worker Vice-Chairperson was concerned about the fact that serious and long-standing allegations were not addressed in detail despite the repeated failure of the relevant government to respond to them. Moreover, his group deeply regretted the significant reduction in the length of the Committee's report especially where this had an impact on the quality of the analysis provided. He also expressed concerns over the relatively mild tone of some comments. In light of the debate concerning the Standards Initiative, the Worker Vice-Chairperson invited the Committee of Experts to consider a broader range of criteria for breaking the reporting cycle in the light of the proposed thematic grouping of Conventions for reporting purposes. He called for some restraint in relation to the proposal for a transversal examination of Conventions in consolidated comments, so that the most serious violations would continue to be clearly identified under each Convention. While he welcomed the extensive references to the conclusions of the Conference Committee in the observations of the Committee of Experts, he would have liked to see a more detailed examination of the extent to which each recommendation by the Conference Committee had been followed through by governments. Finally, the Worker Vice-Chairperson expressed appreciation for the greater balance between fundamental, governance and technical Conventions in the selection of double-footnoted cases in the previous report of the Committee, as this allowed for more cases concerning technical Conventions to be discussed at the Conference. In order to build on this achievement, he called on the Committee of Experts to give as much attention to technical Conventions as possible.

16. The Employer Vice-Chairperson underlined that the consistent and direct dialogue between the two Committees was key in ensuring that ILO constituents would better understand their standards-related obligations and in facilitating mutual understanding between the two Committees. The special sitting allowed the two Vice-Chairpersons to convey the realities and needs of the social partners as users of the supervisory mechanism, and communicate their perspectives on how improvements could allow for a better use of the system. She would have preferred for the discussion to take place at an earlier date during the session of the Committee of Experts. With reference to the positive results of the last meeting of the Conference Committee, she emphasized that this key pillar of the supervisory system had reaffirmed its role as a forum for results-oriented tripartite dialogue on the application of international labour standards, based on mutual understanding and constructive debate. She expressed support for the request made by the Worker Vice-Chairperson that the experts provide in their report an organized analysis of the follow-up to the conclusions adopted by the Conference Committee, so that the social partners could see more clearly whether governments had responded to the conclusions. She also agreed with the Worker Vice-Chairperson that the elaboration by the Committee of comments on technical Conventions provided a comprehensive basis on which to build a balanced list of cases. In 2017, the final list of cases had received many positive comments for its balanced nature as it contained 16 fundamental, five governance and three technical Conventions. As for the issue raised by the Worker Vice-Chairperson on reflecting more fully certain issues in observations, including the concerns raised by employers' and workers' organizations, she suggested as a possibility to complement the comments appearing in the Committee's report with additional information published online in the form of a summary of allegations or of past developments. She stressed the active role of the Employer and Worker Vice-Chairpersons in the elaboration of the conclusions of the Conference Committee in a short, clear and straightforward manner, reflecting concrete steps to address compliance issues. As any controversial issues were intentionally left out of the conclusions, she invited the Committee of Experts to consider the overall balance of these conclusions when examining their follow-up. She also invited the Committee to consider further means to make the report more reader friendly and transparent. With regard to the work of the subcommittee on working methods for example, while some elements on its work had been provided in the General Report, she would have liked to have more concrete information on the questions examined and the outcomes of the discussion during the current session, as this information would help enrich the Governing Body discussions in the framework of the Standards Initiative. The Employer Vice-Chairperson also addressed some questions to the experts concerning the organization of their work in the light of the number of reports received this year and referred to the countries facing serious failures to report, asking if any measures had been

contemplated to give more visibility to these cases in the report. Finally, with regard to the well-known position of her group on the right to strike, she asked whether the Committee had had the opportunity to reflect further on this issue and how it was handling this question this year.

17. The Committee of Experts indicated that it had taken due note of the discussions which had taken place in the framework of the Standards Initiative on ways to strengthen the supervisory system. The Committee informed the Vice-Chairpersons of the decisions adopted on the basis of the work of the subcommittee on working methods, notably the decision to pay closer attention to certain cases of serious failure to report and thereby enhance their visibility, both generally and in particular to the Conference Committee. Also, the Committee decided to draw inspiration from the criteria used for requesting early reports with a view to broadening the very strict criteria for breaking the cycle of review when receiving comments from workers' and employers' organizations under article 23, paragraph 2, of the Constitution. The experts also discussed the innovations introduced by the Maritime Labour Convention, 2006, as amended (MLC, 2006) which was the product of the consolidation, updating and revision of 37 Conventions and 31 Recommendations, and allowed, along with its innovative reporting form, for a coherent and ongoing supervision of its application. The MLC, 2006 was a comprehensive, holistic and innovative instrument which had reached an extraordinary level of acceptance through its rapid ratification by a high number of member States. The same approach had been followed for the adoption of the Work in Fishing Convention, 2007 (No. 188) and its reporting form. The experts also emphasized the importance of technical Conventions which accounted for most international labour standards. Beyond the threshold of fundamental and governance Conventions, the technical Conventions covered a wide range of issues and represented an important part of the work of the Committee which dedicated a large part of its time and attention to these instruments. Since 2012, one of the tools used for the examination of some of these Conventions, was to produce consolidated comments on issues raised under a number of Conventions ratified by the same country in certain thematic areas. This enhanced the coherence of comments and the visibility of the issues raised without losing sight of the specific obligations imposed by each of the Conventions considered. In certain cases, this approach allowed for the identification of additional essential issues and their inclusion in observations. The purpose was to increase the impact of the Committee's comments so that follow-up at country level could be as targeted and constructive as possible. With regard to deferred files, the experts assured the Vice-Chairpersons that the Committee always completed the examination of all files presented to it by the secretariat. However, a number of reports had to be deferred each year. Among the reasons for this were the late submission of reports after the due date of 1 September, which seriously disturbed the functioning of the system, and the increasing number of comments from employers' and workers' organizations, which was a welcome development, but also contributed to a significant increase in the information to be considered in relation to the fulfilment of the obligations under the Conventions by member States. Finally, with regard to the right to strike, the experts indicated to the Employer Vice-Chairperson that they had reviewed carefully her statement at the Conference Committee and emphasized three points. First, the Committee of Experts examined under Convention No. 87, a number of recurrent themes including violations of civil liberties, denial of employers' and workers' right to establish and join organizations of their own choosing, and the right of these organizations to freely organize their activities and formulate their programmes without interference from the State. The right to strike was often being examined as a sub-issue of the first topic (violations of civil liberties) and the third topic (organization of activities without interference). The experts therefore examined a wide range of important questions under Convention No. 87 and not primarily the right to strike. Second, the experts paid due attention to the reports received from member States which often contained information on the way the right to strike was being regulated at national level, along with numerous comments from employers' and workers' organizations on this point. Third, while Article 9 of Convention No. 87 left the extent of the guarantees of the Convention for the armed forces and police to be determined by national laws and regulations, the other provisions were not assigned to the exclusive control of national laws and regulations and therefore the Committee had a duty to review the way in which the Convention was applied across ratifying member States.

18. Information on the follow-up given by the Committee to the conclusions of the Conference Committee at its 106th Session (2017) is provided in paragraph 43 of this General Report.<sup>4</sup>

## **Mandate**

19. **The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by**

<sup>4</sup> Moreover, updated information on the follow-up given by the secretariat to the conclusions of the Conference Committee can be found as of 1 April 2018, on the official website of the Conference Committee.

virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.

## II. Compliance with standards-related obligations

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

20. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions that have been ratified by member States (article 22 of the Constitution) and that have been declared applicable to non-metropolitan territories (article 35 of the Constitution).

#### **Reporting arrangements**

21. In accordance with the decision taken by the Governing Body at its 258th Session (November 1993), the reports due on ratified Conventions should be sent to the Office **between 1 June and 1 September** of each year.

22. The Committee recalls that detailed reports should be sent in the case of first reports (a first report is due after ratification) or when specifically requested by the Committee of Experts or the Conference Committee. Simplified reports are then requested on a regular basis.<sup>5</sup> The Committee also recalls that, at its 306th Session (November 2009), the Governing Body decided to increase from two to three years the regular reporting cycle for the fundamental and governance Conventions and to maintain the cycle at five years for the other Conventions.

23. In addition, reports may be requested by the Committee outside of the regular reporting cycle.<sup>6</sup> Reports may also be expressly requested outside of the regular reporting cycle by the Conference Committee or the Governing Body. At each session, the Committee also has to examine reports requested in cases where a government had failed to send a report due for the previous period or to reply to the Committee's previous comments.<sup>7</sup>

#### **Compliance with reporting obligations**

24. This year a total of 2,242 reports (2,083 reports under article 22 of the Constitution and 159 reports under article 35 of the Constitution) were requested from governments on the application of Conventions ratified by member States, compared to 2,539 reports last year.

25. The Committee observes with *concern* that the proportion of reports received by 1 September 2017 remains low (38.2 per cent, compared with 39.9 per cent at its previous session). It recalls that the fact that a significant number of reports are received after 1 September disturbs the sound operation of the regular supervisory procedure. *The Committee is therefore bound to reiterate its request that member States make a particular effort to ensure that their reports are submitted in time next year and that they contain all the information requested so as to allow a complete examination by the Committee. The Committee intends to examine ways to address this issue at its next session in the framework of the subcommittee on its working methods.*

<sup>5</sup> In 1993, a distinction was made between detailed and simplified reports. As explained in the report forms, in the case of simplified reports, information need normally be given only on the following points: (a) any new legislative or other measures affecting the application of the Convention; (b) replies to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations; and (c) replies to comments by the supervisory bodies.

<sup>6</sup> See para. 45 of the General Report.

<sup>7</sup> See paras 8–10 of the General Report on changes to the Committee's working methods introduced in relation to the treatment of repetitions.

26. At the end of the present session of the Committee, 1,519 reports had been received by the Office. This figure corresponds to 67.8 per cent of the reports requested<sup>8</sup> (last year, the Office received a total of 1,805 reports, representing 71.1 per cent). The Committee notes in particular that 61 of the 95 first reports due on the application of ratified Conventions were received by the time the Committee's session ended (last year, 42 of the 89 first reports due had been received).

27. When examining the failure by member States to respect their reporting obligations, the Committee adopts "general" comments (contained at the beginning of Part II (section I) of this report). It makes general observations when none of the reports due have been sent for two or more years; or when a first report has not been sent for two or more years. It makes a general direct request when, in the current year, a country has not sent the reports due, or the majority of reports due; or it has not sent a first report due.

28. None of the reports due have been sent for the past two or more years from the following 15 countries: **Belize, Cook Islands, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Haiti, Malaysia – Sabah, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, Somalia, Timor-Leste, Vanuatu and Yemen.**

29. **Thirteen** countries have failed to supply a first report for two or more years:

State	Conventions Nos
Belize	– Since 2016: MLC, 2006
Comoros	– Since 2016: Convention No. 144
Congo	– Since 2016: MLC, 2006
Cook Islands	– Since 2016: Conventions Nos 11, 14, 29, 99 and 105
Equatorial Guinea	– Since 1998: Conventions Nos 68 and 92
Gabon	– Since 2016: MLC, 2006
Guyana	– Since 2015: Convention No. 189
Republic of Maldives	– Since 2015: Convention No. 100 and – Since 2016: MLC, 2006
Nicaragua	– Since 2015: MLC, 2006
Saint Vincent and the Grenadines	– Since 2014: MLC, 2006
Serbia	– Since 2016: Convention No. 94
Somalia	– Since 2016: Conventions Nos 87, 98 and 182
Viet Nam	– Since 2016: Convention No. 187

30. *The Committee urges the Governments concerned to make every effort to supply the reports requested on ratified Conventions, and to make a special effort to supply the first reports due.* The Committee, like the Conference Committee, emphasizes the particular importance of first reports, which provide the basis on which the Committee makes its initial assessment of the application of the specific Conventions concerned. The Committee is aware that, where no reports have been sent for some time, it is likely that administrative or other problems are at the origin of the difficulties encountered by governments in fulfilling their constitutional obligations. In such cases, *it is important for governments to request assistance from the Office and for such assistance to be provided rapidly.*<sup>9</sup> The Committee wishes to draw attention to the revised criteria which appear in paragraphs 9 and 10 of its General Report for the examination of cases where governments fail to send first reports for three consecutive years.

31. The following countries have failed to indicate for the past three years, the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies of the reports supplied to the Office under article 22 of the Constitution have been communicated: Rwanda and the Plurinational State of Bolivia.<sup>10</sup>

<sup>8</sup> Appendix I to this report provides an indication by country of whether the reports requested (under articles 22 and 35 of the Constitution) have been registered or not by the end of the meeting of the Committee. Appendix II shows, for the reports requested under article 22 of the Constitution, for each year since 1932, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee of Experts and by the date of the session of the International Labour Conference.

<sup>9</sup> In certain exceptional cases, the absence of reports is a result of more general difficulties related to the national situation, which prevents the provision of any technical assistance by the Office.

<sup>10</sup> See the general observation contained in Part II.I of this year's report.

32. The Committee recalls that, in accordance with the tripartite nature of the ILO, compliance with this constitutional obligation is intended to enable representative organizations of employers and workers to participate fully in supervision of the application of international labour standards.<sup>11</sup> If a government fails to comply with this obligation, these organizations are denied their opportunity to comment and an essential element of tripartism is lost. *The Committee calls on the member State concerned to discharge its obligation under article 23, paragraph 2, of the Constitution.*

### **Replies to the comments of the Committee**

33. Governments are requested to reply in their reports to the observations and direct requests made by the Committee, and the majority of governments have provided the replies requested. In some cases, the reports received did not contain replies to the Committee's requests or were not accompanied by copies of the relevant legislation or other documentation necessary for their full examination. In such cases, the Office, as requested by the Committee, has written to the governments concerned asking them to supply the requested information or material, where this material was not otherwise available.

34. This year, no information has been received as regards all or most of the observations and direct requests of the Committee to which a reply was requested for the following countries: **Albania, Bahamas, Barbados, Belize, Botswana, Brunei Darussalam, Chad, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Eritrea, Estonia, Gambia, Grenada, Guinea-Bissau, Haiti, Italy, Jamaica, Kiribati, Kyrgyzstan, Liberia, Libya, Madagascar, Malawi, Malaysia, Malaysia (Peninsular Malaysia, Sabah and Sarawak), Mozambique, Netherlands (Aruba and Curaçao), Pakistan, Papua New Guinea, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sierra Leone, Singapore, Solomon Islands, Somalia, the former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Vanuatu and Yemen.**

35. The Committee notes with *concern* that the number of comments to which replies have not been received remains significantly high. The Committee underlines that the value attached by ILO constituents to the dialogue with the supervisory bodies on the application of ratified Conventions is considerably diminished by the failure of governments to fulfil their obligations in this respect. The Committee also draws the attention of governments to the revised criteria for the examination of cases where governments have failed to reply to observations made by employers' and workers' organizations for two years or where legislative developments have intervened in relation to matters raised in previous comments. *The Committee urges the countries concerned to provide all the information requested and recalls that they may avail themselves of the technical assistance of the Office, where necessary.*

### **Follow-up to cases of serious failure by member States to fulfil reporting obligations mentioned in the report of the Committee on the Application of Standards**

36. As the functioning of the supervisory system is based primarily on the information provided by governments in their reports, both the Committee and the Conference Committee considered that failure by member States to fulfil their obligations in this respect has to be given the same level of attention as non-compliance relating to the application of ratified Conventions. The two Committees have therefore decided to strengthen, with the assistance of the Office, the follow-up given to these cases of failure.

37. The Committee was informed that, pursuant to the discussions of the Conference Committee in June 2017, the Office had sent specific letters to the member States mentioned in the relevant paragraphs of the report of the Conference Committee concerning these cases of failure.<sup>12</sup> The Committee welcomes the fact that, since the end of the session of the Conference, 11 of the member States concerned have fulfilled at least part of their reporting obligations.<sup>13</sup>

38. The Committee hopes that the Office will maintain the sustained technical assistance that it has been providing to member States in this respect. Finally, the Committee welcomes the fruitful collaboration that it maintains with the Conference Committee on this matter of mutual interest, which is essential to the proper discharge of their respective tasks. The Committee draws attention to its decision to draw certain cases of serious reporting failure to the attention of the Conference Committee so that an urgent appeal can be launched to the governments concerned and they may be advised that, in the absence of a report, the Committee would examine the substance of the matter on the basis of information at its disposal.

<sup>11</sup> See para. 63 of the General Report.

<sup>12</sup> See report of the Committee on the Application of Standards, International Labour Conference, 106th Session, Geneva, 2017, paras 150, 151 and 152.

<sup>13</sup> Cabo Verde, Croatia, Fiji, Greece, Guinea, Nigeria, Sri Lanka, Syrian Arab Republic, Thailand, United Kingdom (Bermuda) and Zambia.

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

39. In examining the reports received on ratified Conventions and Conventions declared applicable to non-metropolitan territories, in accordance with its practice, the Committee assigned to each of its members the initial responsibility for a group of Conventions. The members submit their preliminary conclusions on the instruments for which they are responsible to the Committee in plenary sitting for discussion and approval. Decisions on comments are adopted by consensus.

40. The Committee wishes to inform member States that it examined all reports that were brought to its attention. In view of the secretariat's heavy workload, which is largely due to the high number of reports submitted after the due date of 1 September, a number of reports could not be brought to the Committee's attention and will be examined at its next session.

### **Observations and direct requests**

41. First of all, the Committee considers that it is worthy of note that in 217 cases it has found, following examination of the corresponding reports, that no further comment was called for regarding the manner in which a ratified Convention had been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form of either "observations", which are reproduced in the report of the Committee, or "direct requests", which are not published in the Committee's report, but are communicated directly to the governments concerned and are available online.<sup>14</sup> Observations are generally used in more serious or long standing cases of failure to fulfil obligations. They point to important discrepancies between the obligations under a Convention and the related law and/or practice of member States. They may address the absence of measures to give effect to a Convention or to take appropriate action following the Committee's requests. They may also highlight progress, as appropriate. Direct requests allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also used to examine the first reports supplied by governments on the application of Conventions.

42. The Committee's observations appear in Part II of this report, together with, for each subject, a list of direct requests. An index of all observations and direct requests, classified by country, is provided in Appendix VII to the report.

### **Follow-up to the conclusions of the Committee on the Application of Standards**

43. The Committee examines the follow-up to the conclusions of the Committee on the Application of Standards. The corresponding information forms an integral part of the Committee's dialogue with the governments concerned. This year, the Committee has examined the follow-up to the conclusions adopted by the Committee on the Application of Standards during the last session of the International Labour Conference (106th Session, June 2017) in the following cases.

List of cases in which the Committee has examined the <b>follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)</b>		
State	Conventions Nos	Page
Afghanistan	182	230
Algeria	87	43
Bahrain	111	344
Bangladesh	87	45
Botswana	87	56
Cambodia	87	60
Democratic Republic of the Congo	182	271
Ecuador	87	73

<sup>14</sup> Observations and direct requests are accessible through the NORMLEX database, on the ILO website ([www.ilo.org/normes](http://www.ilo.org/normes)).

List of cases in which the Committee has examined the <b>follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)</b>		
State	Conventions Nos	Page
Egypt	87	78
El Salvador	144	421
Guatemala	87	91
India	81	439
Kazakhstan	87	118
Malaysia - Peninsular Malaysia/Sarawak	19	536
Mauritania	29	204
Poland	29	210
Turkey	135	165
Ukraine	81/129	453
Bolivarian Republic of Venezuela	122	490
Zambia	138	333

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

44. In accordance with the established practice, the Committee also examines the measures taken by governments pursuant to the recommendations of tripartite committees (set up to examine representations under article 24 of the Constitution) and commissions of inquiry (set up to examine complaints under article 26 of the Constitution). The corresponding information forms an integral part of the Committee's dialogue with the governments concerned. The Committee considers it useful to indicate the comments which are related to these constitutional supervisory procedures, as indicated in the following tables.

List of cases examined by the Committee on which <b>complaints are pending under article 26</b>	
State	Conventions Nos
Guatemala	87
Bolivarian Republic of Venezuela	26, 87 and 144

List of cases in which the Committee has examined the <b>measures taken by governments to give effect to the recommendations of tripartite committees</b> (representations under article 24)	
State	Conventions Nos
Japan	159 and 181
Peru	29 and 169
Portugal	29, 81/129 and 155

List of cases in which the Committee has examined the <b>measures taken by governments to give effect to the recommendations of tripartite committees</b> (representations under article 24)	
State	Conventions Nos
Romania	95
Spain	131
Thailand	29

### Special notes

45. As in the past, the Committee has indicated by special notes (traditionally known as “footnotes”) at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in May–June 2018.

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

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

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

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

49. At its 76th Session (November–December 2005), the Committee decided that the identification of cases in respect of which a government is requested to provide detailed information to the Conference would be a two-stage process: first, the expert initially responsible for a particular group of Conventions recommends to the Committee the insertion of special notes; second, in light of all the recommendations made, the Committee will, after discussion, take a final, collegial decision once it has reviewed the application of all the Conventions.

50. This year, the Committee has requested governments to supply full particulars to the Conference at its next session in 2018 in the following cases:

List of the cases in which the Committee has requested governments to <b>supply full particulars to the Conference</b> at its next session in May–June 2018	
State	Conventions Nos
Plurinational State of Bolivia	138
Cambodia	105
Eritrea	29

List of the cases in which the Committee has requested governments to <b>supply full particulars to the Conference</b> at its next session in May–June 2018	
State	Conventions Nos
Haiti	1/14/30/106
Honduras	87
Republic of Moldova	81/129

51. The Committee has requested governments to furnish detailed reports outside of the reporting cycle in the following cases:

List of the cases in which the Committee has requested <b>detailed reports outside of the reporting cycle</b>	
State	Convention No.
Malawi	159
Peru	159

52. In addition, the Committee has requested a full reply to its comments outside of the reporting cycle in the following cases:

List of the cases in which the Committee has requested <b>a full reply to its comments outside of the reporting cycle</b>	
State	Conventions Nos
Armenia	174/176
Canada	MLC, 2006
Plurinational State of Bolivia	131
Brazil	98
Burundi	26
Cameroon	158
Colombia	26/95/99 and 136/162/170/174
Croatia	MLC, 2006
Ecuador	98
Egypt	87 and 105
Eritrea	105
Fiji	MLC, 2006
Greece	87
Guatemala	87 and 98
Haiti	98
India	81
Kazakhstan	87
Kiribati	MLC, 2006
Republic of Korea	MLC, 2006

List of the cases in which the Committee has requested a full reply to its comments outside of the reporting cycle	
State	Conventions Nos
Liberia	112/113/114
Luxembourg	MLC, 2006
Malaysia	MLC, 2006
Marshall Islands	185
Mauritius	MLC, 2006
Pakistan	81 and 98
Papua New Guinea	158
Qatar	81
Samoa	MLC, 2006
Seychelles	MLC, 2006
Trinidad and Tobago	125
Turkey	135
Tuvalu	MLC, 2006
Ukraine	81/129
United Kingdom - Gibraltar	MLC, 2006
Viet Nam	MLC, 2006

### Cases of progress

53. Following its examination of the reports supplied by governments, and in accordance with its standard practice, the Committee refers in its comments to cases in which it expresses its *satisfaction* or *interest* at the progress achieved in the application of the respective Conventions.

54. At its 80th and 82nd Sessions (2009 and 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

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

55. Since first identifying cases of satisfaction in its report in 1964,<sup>15</sup> the Committee has continued to follow the same general criteria. The Committee expresses *satisfaction* in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to

<sup>15</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

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

56. Details concerning these cases of progress are found in Part II of this report and cover **26** instances in which measures of this kind have been taken in **23** countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>express its satisfaction</b> at certain measures taken by the governments of the following countries	
State	Conventions Nos
Argentina	182
Belarus	29
Belgium	138
Benin	105
Bosnia and Herzegovina	138
Cabo Verde	155
Chile	138
China - Macau Special Administrative Region	182
El Salvador	144
Guatemala	98
Ireland	98
Italy	137
Lao People's Democratic Republic	138
Liberia	87
Mali	100
Mexico	87
Pakistan	29, 105 and 138
Peru	29
Sweden	168
The former Yugoslav Republic of Macedonia	182
Trinidad and Tobago	138 and 182
Turkey	138
Uganda	182

57. Thus the total number of cases in which the Committee has been led to **express its satisfaction** at the progress achieved following its comments has risen to **3,059** since the Committee began listing them in its report.

58. Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979.<sup>16</sup> In general, cases of *interest* cover **measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners**. The Committee's practice has developed to such an extent that

<sup>16</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

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

**59.** Details concerning the cases in question are found either in Part II of this report or in the requests addressed directly to the governments concerned, and include **168** instances in which measures of this kind have been adopted in **97** countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>note with interest</b> certain measures taken by the governments of the following countries	
State	Conventions Nos
Afghanistan	182
Albania	156
Algeria	95, 99 and 100
Angola	138
Argentina	138 and 189
Australia	111, 122, 156 and 158
Austria	95
Bahrain	155
Bangladesh	81, 87 and 98
Belgium	100, 111 and 122
Plurinational State of Bolivia	182
Bosnia and Herzegovina	159
Brazil	111, 139, 161 and 176
Bulgaria	94
Burundi	29 and 111
Cabo Verde	98
Cambodia	122, 138 and 182
Canada	111, 144 and 162
Central African Republic	111
Chile	161 and 182
China	138
Colombia	182 and 189
Comoros	77, 78 and 122
Costa Rica	94 and 182

List of the cases in which the Committee has been able to <b>note with interest</b> certain measures taken by the governments of the following countries	
State	Conventions Nos
Croatia	122 and 159
Cuba	138
Czech Republic	122
Democratic Republic of the Congo	88
Denmark	122
Djibouti	13, 81, 111, 115, 120 and 144
Dominican Republic	88 and 122
Ecuador	98
Egypt	29 and 182
Fiji	105
France	100, 102 and 111
France - French Polynesia	144
Georgia	98
Germany	26, 87 and 99
Guatemala	81, 87 and 98
Guinea	87 and 98
Honduras	98
Hungary	98
Iceland	100 and 111
India	111 and 142
Iraq	98
Ireland	122
Italy	94
Jamaica	111
Japan	81, 156 and 159
Jordan	100
Kazakhstan	122
Kenya	137
Lao People's Democratic Republic	29
Latvia	122
Lesotho	87
Liberia	87
Lithuania	115 and 122
Luxembourg	158
Madagascar	12 and 122

List of the cases in which the Committee has been able to <b>note with interest</b> certain measures taken by the governments of the following countries	
State	Conventions Nos
Mali	87 and 111
Malta	87, 98, 117 and 159
Mauritania	81 and 114
Mauritius	87
Mexico	90
Republic of Moldova	87
Mongolia	159
Montenegro	87, 111 and 156
Mozambique	122
Namibia	98
Nepal	98
Netherlands - Aruba	87
Netherlands - Caribbean Part of the Netherlands	87
Nicaragua	29, 98 and 182
Niger	158
Nigeria	97
Norway	156
Pakistan	138
Panama	138 and 144
Paraguay	77, 78, 79 and 90
Peru	29, 77 and 78
Philippines	94 and 144
Poland	144
Portugal	142
Qatar	81
Rwanda	122 and 182
Sao Tome and Principe	144 and 159
Serbia	29 and 105
Slovenia	158
Sri Lanka	138 and 144
Sweden	158
Tajikistan	77 and 78
Thailand	29
Tunisia	29, 138, 154 and 182
Turkey	98

List of the cases in which the Committee has been able to <b>note with interest</b> certain measures taken by the governments of the following countries	
State	Conventions Nos
Uganda	182
Ukraine	77 and 78
United States	144
Uruguay	137
Vietnam	124

### ***Practical application***

60. As part of its assessment of the application of Conventions in practice, the Committee notes the information contained in governments' reports, such as information relating to judicial decisions, statistics and labour inspection. The supply of this information is requested in almost all report forms, as well as under the specific terms of some Conventions.

61. The Committee notes that approximately a quarter of the reports received this year contain information on the practical application of Conventions including information on national jurisprudence, statistics and labour inspection.

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

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

63. At each session, the Committee recalls that the contribution by employers' and workers' organizations is essential for the Committee's evaluation of the application of Conventions in national law and in practice. Member States have an obligation under article 23, paragraph 2, of the Constitution to communicate to the representative employers' and workers' organizations copies of the reports supplied under articles 19 and 22 of the Constitution. Compliance with this constitutional obligation is intended to enable organizations of employers and workers to participate fully in the supervision of the application of international labour standards. In some cases, governments transmit the observations made by employers' and workers' organizations with their reports, sometimes adding their own comments. However, in the majority of cases, observations from employers' and workers' organizations are sent directly to the Office which, in accordance with the established practice, transmits them to the governments concerned for comment, so as to ensure respect for due process. For reasons of transparency, all the observations received from employers' and workers' organizations on the application of ratified Conventions since the last session of the Committee are listed in Appendix III to its report. Where the Committee finds that the observations are not within the scope of the Convention or do not contain information that would add value to its examination of the application of the Convention, it will not refer to them in its comments. Otherwise, the observations received from employers' and workers' organizations may be considered in an observation or in a direct request, as appropriate.

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

65. Furthermore, the Committee recalled that, **in a non-reporting year**, when employers' and workers' organizations send observations which simply repeat comments made in previous years, or refer to matters already raised by the Committee, they will be examined in the year when the government's report is due, in accordance with the regular reporting cycle. In this case, a report will not be requested from the government outside of that cycle. However, where the

observations meet the criteria of exceptional cases, as defined in the previous paragraph, the Committee will examine them in the year in which they are received, even in the absence of a reply from the government concerned. The government will then be requested to send a report the next year, which may be outside of the regular reporting cycle.

66. The Committee emphasized that the procedure set out above aims at giving effect to decisions taken by the Governing Body which have both extended the reporting cycle and provided for safeguards in that context to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due.

67. As indicated above, at this session the Committee's attention was drawn to the Governing Body's consideration of extending the length of the reporting cycle for technical Conventions from five to six years. In this respect, the Committee considered the manner in which it might broaden the very strict criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations on a specific country under article 23, paragraph 2, of the ILO Constitution. The Committee decided that inspiration in this regard could be drawn from those criteria used for placing special notes known as "footnotes" at the end of its comments.<sup>17</sup>

68. The Committee is pleased to note the increasing number of observations received from employers' and workers' organizations. Since its last session, the Committee has received **1,325** observations (compared to 1,160 last year), **330** of which (compared to 314 last year) were communicated by employers' organizations and **995** (compared to 846 last year) by workers' organizations. The great majority of the observations received (**836** compared to 820 last year) related to the application of ratified Conventions;<sup>18</sup> **334** of these observations (compared to 402 last year) concerned the application of fundamental Conventions, **97** (compared to 84 last year) related to governance Conventions and **405** (compared to 334 last year) concerned the application of other Conventions. Moreover, **489** observations (compared to 340 last year) related to the General Survey on the instruments concerning working time.

69. The Committee notes that, **572** of the observations received this year on the application of ratified Conventions were transmitted directly to the Office. In **264** cases, the governments transmitted the observations made by employers' and workers' organizations with their reports. The Committee notes that in general the employers' and workers' organizations concerned endeavoured to gather and present information on the application of ratified Conventions in specific countries, both in law and in practice. The Committee recalls that observations of a general nature relating to certain Conventions are more appropriately addressed within the framework of the Committee's consideration of General Surveys or within other forums of the ILO.

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

70. The combination of the work of the supervisory bodies and the practical guidance given to member States through development cooperation and technical assistance has always been one of the key dimensions of the ILO supervisory system. In this regard, the Committee welcomed the information received from the Office that, in 2017, targeted technical assistance continued and was further reinforced in order to support countries with the ratification and implementation of international labour standards and to strengthen the capacity of ministries of labour to fulfil their constitutional obligations (including the preparation of reports on the application of Conventions).

**71. The Committee reiterates its hope that a comprehensive technical assistance programme will be developed in the near future, and that it will be adequately resourced to help all constituents improve the application of international labour standards in both law and practice.**

72. In addition to cases of serious failure by member States to fulfil certain specific obligations related to reporting, the cases for which, in the Committee's view, technical assistance from the Office would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions are highlighted in the following table and details can be found in Part II of this report.

List of the cases in which <b>technical assistance</b> would be particularly useful in helping member States	
State	Conventions Nos
Algeria	100
Bahamas	100
Bahrain	111

<sup>17</sup> See paras 12 and 47 of the General Report.

<sup>18</sup> See Appendix III to this report.

List of the cases in which <b>technical assistance</b> would be particularly useful in helping member States	
<b>State</b>	<b>Conventions Nos</b>
Bangladesh	87
Plurinational State of Bolivia	138
Bosnia and Herzegovina	119/136/139/148/155/161/162/174/176/184/187
Botswana	87
Cabo Verde	87
Cambodia	87
Cameroon	122
Central African Republic	94
Comoros	87, 98 and 122
Congo	144
Djibouti	13/115/120, 81 and 94
Ecuador	87 and 98
El Salvador	98 and 144
Eritrea	29
Ethiopia	158
Gabon	98
Ghana	87 and 94
Guatemala	87 and 98
Haiti	87 and 98
India	100
Indonesia	87
Islamic Republic of Iran	100 and 111
Israel	100
Jamaica	100
Kazakhstan	87
Kenya	98
Kuwait	87
Kyrgyzstan	87
Lesotho	87
Madagascar	98
Mauritius	87, 98 and MLC, 2006
Mexico	87
Montenegro	98
Namibia	98
Panama	94
Papua New Guinea	87

List of the cases in which <b>technical assistance</b> would be particularly useful in helping member States	
State	Conventions Nos
Russian Federation	98
Senegal	100
Solomon Islands	111
United Republic of Tanzania	144
Uganda	158
Bolivarian Republic of Venezuela	26/95
Zambia	98

### C. Reports under article 19 of the Constitution

73. The Committee recalls that the Governing Body decided that the subjects of General Surveys should be aligned with those of the annual recurrent discussions in the Conference under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008. This year, governments were requested to supply reports under article 19 of the Constitution as a basis for the General Survey on the following instruments: the Hours of Work (Industry) Convention, 1919 (No. 1), the Weekly Rest (Industry) Convention, 1921 (No. 14), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), the Forty-Hour Week Convention, 1935 (No. 47), the Night Work (Women) Convention (Revised), 1948 (No. 89), the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), the Holidays with Pay Convention (Revised), 1970 (No. 132), the Night Work Convention, 1990 (No. 171), the Part-Time Work Convention, 1994 (No. 175), the Night Work of Women (Agriculture) Recommendation, 1921 (No. 13), the Holidays with Pay Recommendation, 1954 (No. 98), the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), the Reduction of Hours of Work Recommendation, 1962 (No. 116), the Night Work Recommendation, 1990 (No. 178) and the Part-Time Work Recommendation, 1994 (No. 182).<sup>19</sup> In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising five members of the Committee.

74. The Committee notes with *regret* that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the Constitution have been received from the following **38** countries: **Afghanistan, Angola, Armenia, Belize, Botswana, Chad, Comoros, Congo, Cook Islands, Democratic Republic of the Congo, Dominica, Grenada, Guinea-Bissau, Guyana, Haiti, Ireland, Kiribati, Liberia, Libya, Republic of Maldives, Marshall Islands, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Swaziland, Timor-Leste, Tonga, Tuvalu, United Arab Emirates, Vanuatu and Yemen.**

75. The Committee notes with *interest* the significant number of observations received from employers' and workers' organizations on this year's General Survey (489 observations compared to 340 last year).

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

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

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

- information on measures taken to submit to the competent authorities the instruments adopted by the Conference from June 1970 (54th Session) to June 2017 (106th Session) (Conventions Nos 131–189, Recommendations Nos 135–205 and Protocols); and
- replies to the observations and direct requests made by the Committee at its 87th Session (November–December 2016).

<sup>19</sup> See Report III (Part B), International Labour Conference, 106th Session, Geneva, 2017.

78. Appendix IV of Part II of the report contains a summary of the most recent information received indicating the competent national authorities to which the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, as well as the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, were submitted and the date of submission. In addition, Appendix IV summarizes the information supplied by governments with respect to the instruments adopted earlier and submitted to the competent authorities in 2017.

79. Additional statistical information is found in Appendices V and VI of Part II of the report. Appendix V, compiled based on information provided by governments, shows where each member State stands in terms of its constitutional obligation of submission. Appendix VI shows the overall submission status of each instrument adopted since the 54th Session (June 1970) of the Conference. All instruments adopted prior to the 54th Session of the Conference have been submitted. The statistical data in Appendices V and VI are regularly updated by the competent units of the Office and can be accessed in NORMLEX.

### 103rd Session

80. At its 103rd Session in June 2014, the Conference adopted the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). The Committee notes with *interest* that the Protocol of 2014 to the Forced Labour Convention, 1930, which entered into force on 9 November 2016, has been ratified by 21 member States: **Argentina, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Iceland, Jamaica, Mali, Mauritania, Namibia, Netherlands, Niger, Norway, Panama, Poland, Spain, Sweden, Switzerland and United Kingdom.** *The Committee encourages all governments to continue their efforts to submit the instruments adopted by the Conference at its 103rd Session to their legislatures and to report on any action taken with regard to these instruments.*

### 104th Session

81. At its 104th Session in June 2015, the Conference adopted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The 12-month period for submission of Recommendation No. 204 to the competent authorities ended on 12 June 2016, and the 18-month period (in exceptional circumstances) on 12 December 2016. The Committee notes that 70 governments have provided information on the submission to the competent authorities of Recommendation No. 204. It refers in this regard to Appendix IV of Part II of the report which contains a summary of information supplied by governments on submission, including with respect to Recommendation No. 204. *The Committee encourages all governments to continue their efforts to submit Recommendation No. 204 to their legislatures and to report on any action taken with regard to this instrument.*

### 105th and 106th Sessions

82. The Committee recalls that no instrument was adopted at the 105th Session of the Conference (May–June 2016). At its 106th Session in June 2017, the Conference adopted the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). The 12-month period for submission of Recommendation No. 205 to the competent authorities will end on 16 June 2018, and the 18-month period (in exceptional circumstances) will end on 16 December 2018. The Committee notes that nine governments have provided information on the submission of Recommendation No. 205 to the competent national authorities. *The Committee welcomes the information provided to date and encourages all governments to submit Recommendation No. 205 to their legislatures by the constitutional deadline and to report on any action taken with regard to this instrument.*

### Cases of progress

83. The Committee notes with *interest* the information provided by the governments of the following countries: **Democratic Republic of the Congo, Guinea, Jamaica and Mozambique.** It welcomes the efforts made by these governments in overcoming the significant delays in submission and taking important steps toward fulfilling their constitutional obligation to submit to their legislatures the instruments adopted by the Conference over a number of years.

### Special problems

84. To facilitate the work of the Conference Committee on the Application of Standards, this report only mentions those governments that have not submitted the instruments adopted by the Conference to their competent authorities for at least seven sessions. These special problems are referred to as cases of “serious failure to submit”. **This time frame begins at the 95th Session (2006) and concludes at the 104th Session (2015), bearing in mind that the Conference did not adopt any Conventions or Recommendations during its 97th (2008), 98th (2009) and 102nd (2013) Sessions.** Thus, this time frame was deemed long enough to warrant inviting the governments concerned to a special sitting of the Conference Committee so that they could account for delays in submission. In addition, the Committee is also providing information in its observations concerning cases of “failure to submit”, in relation to governments that have not submitted to the competent authorities the instruments adopted at the last six sessions of the Conference.

85. The Committee notes that, at the closure of its 88th Session on 9 December 2017, the following 31 (37 in 2014, 32 in 2015 and 38 in 2016) member States were in the category of “serious failure to submit”: **Azerbaijan, Bahamas, Bahrain, Bangladesh, Belize, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Fiji, Gabon, Guinea-Bissau, Haiti, Kiribati, Kuwait, Kyrgyzstan, Liberia, Libya, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic and Vanuatu.**

86. The Committee is aware of the exceptional circumstances that have affected some of these countries for years, as a result of which some of them have been deprived of the institutions needed to fulfil their obligation to submit instruments. At the 106th Session of the Conference (June 2017), some Government delegations supplied information explaining why their countries had been unable to meet the constitutional obligation to submit Conventions, Recommendations and Protocols to their national legislatures. Following the concerns raised by the Committee of Experts, the Conference Committee also expressed great concern at the failure to respect this obligation. It pointed out that compliance with this constitutional obligation, which means submitting the instruments adopted by the Conference to national legislatures, is of the utmost importance in ensuring the effectiveness of the Organization’s standards-related activities.

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

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

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

89. As the Committee has already pointed out, it is important that governments send the information and documents required by the questionnaire appended to the Memorandum adopted by the Governing Body in March 2005. The Committee must receive for examination a summary or a copy of the documents submitting the instruments to the legislative bodies, an indication of the date of submission, and be informed of the proposals made as to the action to be taken on the instruments submitted. The obligation of submission is discharged only once the instruments adopted by the Conference have been submitted to the legislature and a decision has been taken on them. The Office must be informed of this decision, as well as of the submission of instruments to the legislature. The Committee hopes to continue to note cases of progress in this matter in its next report. It again reminds governments that they may seek technical assistance from the ILO, particularly through the standards specialists in the field.

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

#### **Cooperation with international organizations in the field of standards**

90. In the context of collaboration with other international organizations on questions concerning the application of international instruments relating to subjects of common interest, the ILO has entered into special arrangements with the United Nations, certain specialized agencies and other intergovernmental organizations.<sup>20</sup> In particular, these organizations may send information on the application of certain Conventions that would assist the Committee of Experts in examining the application of these Conventions.

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

91. The Committee recalls that international labour standards and the provisions of related United Nations human rights treaties are complementary and mutually reinforcing. It emphasizes that continuing cooperation between the ILO and the United Nations with regard to the application and supervision of relevant instruments is necessary, particularly in the context of the United Nations programming framework aimed at greater coherence and cooperation within the United Nations system and in the light of the 2030 Agenda for Sustainable Development. The Committee welcomes the fact that the Office has launched important alliances with other international organizations for the implementation of the 2030 Agenda, including Alliance 8.7 created to end forced labour, modern slavery, human trafficking and child labour and the Equal Pay International Coalition (EPIC) which aims at the realization of SDG target 8.5 on equal pay between women and men for work of equal value.

92. The Committee welcomes the fact that the Office has continued to provide information on the application of international labour standards to the United Nations treaty and charter-based bodies on a regular basis, in accordance with the existing arrangements between the ILO and the United Nations. It also continued to follow the work of these bodies and to take their comments into consideration where appropriate. The Committee considers that coherent international monitoring is an important basis for action to enhance the enjoyment of, and compliance with civil, political, economic, social and cultural rights at the national level. With regard to the elaboration of the supporting mechanisms that aim to effectively implement and monitor progress towards the 2030 Agenda, the ILO framework can serve as an exemplar of the way in which accountability mechanisms can work – from the global level through the national level. In this respect, the ILO supervisory machinery may contribute to and be used in efforts to achieve the relevant goals and targets associated with the accomplishment of decent work for all.

<sup>20</sup> The following organizations are concerned: the United Nations, the Office of the High Commissioner for Human Rights (OHCHR), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the International Atomic Energy Agency (IAEA) (concerning the Radiation Protection Convention, 1960 (No. 115)), and the International Maritime Organization (IMO).

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

93. In accordance with the supervisory procedure established under Article 74, paragraph 4, of the European Code of Social Security, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 22 reports on the application of the Code and, as appropriate, its Protocol. The Committee's conclusions on these reports will be sent to the Council of Europe for examination by its Committee of Experts on Social Security. Once approved, the Committee's comments should lead to the adoption of resolutions by the Committee of Ministers of the Council of Europe on the application of the Code and the Protocol by the countries concerned.

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

\* \* \*

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

Geneva, 9 December 2017

*(Signed)* Abdul G. Koroma  
Chairperson

Rosemary Owens  
Reporter

## **Appendix to the General Report**

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

#### **Mr Shinichi AGO (Japan)**

Professor of International Law at the College of Law, Ritsumeikan University, Kyoto; former Professor of International Economic Laws and Dean of the Faculty of Law at Kyushu University; member of the Asian Society of International Law, the International Law Association and the International Society for Labour and Social Security Law; Judge, Asian Development Bank Administrative Tribunal.

#### **Ms Lia ATHANASSIOU (Greece)**

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

#### **Ms Leila AZOURI (Lebanon)**

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

#### **Mr Lelio BENTES CORRÊA (Brazil)**

Judge at the Labour Superior Court (Tribunal Superior do Trabalho) of Brazil, former Labour Public Prosecutor of Brazil, LL.M of the University of Essex, United Kingdom; former member of the National Council of Justice of Brazil; Professor at the Instituto de Ensino Superior de Brasília; Professor at the National School for Labour Judges.

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

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

**Mr Halton CHEADLE** (South Africa)

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

**Ms Graciela DIXON CATON** (Panama)

Former President of the Supreme Court of Justice of Panama; former President of the Penal Court of Cassation and of the Chamber of General Business Matters of the Supreme Court of Panama; former President of the International Association of Women Judges; former President of the Latin American Federation of Judges; former National Consultant for the United Nations Children's Fund (UNICEF); presently Arbitrator at the Court of Arbitration of the Official Chamber of Commerce of Madrid; Arbitrator at the Center for Dispute Resolution (CESCON) of the Panamanian Chamber of Construction, as well as for the Conciliation and Arbitration Center of the Panamanian Chamber of Commerce; and legal adviser and international consultant.

**Mr Rachid FILALI MEKNASSI** (Morocco)

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

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

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

**Mr Alain LACABARATS** (France)

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

**Ms Elena E. MACHULSKAYA** (Russian Federation)

Professor of Law, Department of Labour Law, Faculty of Law, Moscow State Lomonosov University; Professor of Law, Department of Civil Proceedings and Social Law, Russian State University of Oil and Gas; Secretary, Russian Association for Labour and Social Security Law; member of the European Committee of Social Rights; member of the President's Committee on the Rights of Persons with Disabilities (non-paid basis).

**Ms Karon MONAGHAN** (United Kingdom)

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

**Mr Vitit MUNTARBHORN** (Thailand)

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

**Ms Rosemary OWENS** (Australia)

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

**Ms Mónica PINTO** (Argentina)

Professor of International Law and Human Rights Law and Dean of the University of Buenos Aires Law School; Judge and President of the World Bank Administrative Tribunal; Judge at the Administrative Tribunal of the Inter-American Development Bank; Vice-President of the Advisory Committee on nominations of judges of the International Criminal Court; commissioner at the International Commission of Jurists; former Special Rapporteur on the independence of judges and lawyers; former United Nations Independent Expert on the situation of human rights in Guatemala and Chad; member of the International Law Association, the ICSID Panel of Conciliators and Arbitrators, the Advisory Council of the Association for the Prevention of Torture, the Argentine Council on International Relations and the American, French and European Societies of International Law; associate member of the Institut de droit international; former visiting professor at Columbia Law School, Paris I and II and Rouen universities; has taught at the Hague Academy on International Law and at the European and Inter-American Institutes on Human Rights.

**Mr Paul-Gérard POUGOUÉ** (Cameroon)

Professor of Law (*agrégé*), Professor Emeritus, Yaoundé University; guest or associate professor at several universities and at the Hague Academy of International Law; Head of the Department of Legal Theory, Legal Epistemology and Comparative Law and Director of the Master's Programme of Legal Theories and Pluralism of the Faculty of Law and Political Sciences of the University of Yaoundé II; on several occasions, President of the jury for the *agrégation* competition (private law and criminal sciences section) of the African and Malagasy Council for Higher Education (CAMES); former member (1993–2001) of the Scientific Council of the *Agence universitaire de la Francophonie* (AUF); former member (2002–12) of the Council of the International Order of Academic Palms of CAMES; member of the International Society for Labour and Social Security Law, the International Foundation for the Teaching of Business Law, the Association Henri Capitant and the Society of Comparative Law; founder and Director of the review *Juridica périodique*; President of the Association for the Promotion of Human Rights in Central Africa (APDHAC); Chairperson of the Scientific Board of the Labour Administration Regional African Centre (CRADAT); Chairperson of the Scientific Board of the Catholic University of Central Africa (UCAC).

**Mr Raymond RANJEVA** (Madagascar)

President of the Madagascar National Academy of Arts, Letters and Sciences; former member (1991–2009), Vice-President (2003–06) and senior judge (2006–09) of the International Court of Justice (ICJ), and President (2005) of the Chamber formed by the ICJ to deal with the Benin/Niger frontier dispute; Bachelor's degree in Law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; *Agrégé* of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux-Montesquieu; former Professor at the University of Madagascar (1981–91) and other institutions; former First Rector of

the University of Antananarivo (1988–90); member of the Malagasy delegation to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties (1976–77); former first Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the Court of Arbitration of the International Chamber of Commerce; member of the Court of Arbitration for Sport; member of the Institute of International Law; member of numerous national and international professional and academic societies; Curatorium of the Hague Academy of International Law; member of the Pontifical Council for Justice and Peace; President of the African Society of International Law since 2012; former Vice-Chairman of the International Law Institute (2015–17); Chairperson of the ILO Commission of Inquiry on Zimbabwe.

**Ms Deborah THOMAS-FELIX** (Trinidad and Tobago)

President of the Industrial Court of Trinidad and Tobago since 2011; Judge of the United Nations Appeals Tribunal since 2014; current President of the United Nations Appeals Tribunal; former Chair of the Trinidad and Tobago Securities and Exchange Commission; former Deputy Chief Magistrate of the Judiciary of Trinidad and Tobago; former President of the Family Court of Saint Vincent and the Grenadines; A. Hubert Humphrey Fulbright Fellow; Georgetown University Leadership Seminar fellow; and Commonwealth Institute of Judicial Education fellow.

**Mr Bernd WAAS** (Germany)

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

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

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

### General observation

(article 23, paragraph 2, of the Constitution)

The Committee recalls that the purpose of the obligation to communicate copies of reports on ratified Conventions to representative employers' and workers' organizations, established in article 23, paragraph 2, of the Constitution, is to enable these organizations to make their own observations on the application of ratified Conventions. The Committee emphasizes that the information received from employers' and workers' organizations bears witness to their involvement in the reporting system and that such information has often led to better knowledge and understanding of the difficulties that countries have met. Further to its general observation of last year, the Committee welcomes the fact that nearly all countries have fulfilled this obligation this year. However, it notes that none of the reports supplied by the following countries indicate the employers' and workers' organizations to which a copy has been communicated: **Algeria** (2017), **Plurinational State of Bolivia** (2015, 2016 and 2017), **Côte d'Ivoire** (2017), **Fiji** (2016 and 2017), **Jamaica** (2017), **Lao People's Democratic Republic** (2017), **Malawi** (2017), **Myanmar** (2017), **Rwanda** (2014, 2015, 2016 and 2017) and **Uganda** (2017). The Committee also notes that a majority of the reports received from **Mongolia** (2017) do not indicate the representative employers' and workers' organizations to which copies of the reports were communicated. *The Committee requests each of these Governments to fulfil their constitutional obligation without delay.*

### General observations

(articles 22 and 35 of the Constitution)

#### Belize

The Committee notes with *concern* that, for the fourth year, the reports due on ratified Conventions have not been received. Thirty reports are now due on fundamental, governance and technical Conventions, including the first report on the Maritime Labour Convention, 2006 (MLC, 2006), due since 2016. The majority of these reports should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit these reports in accordance with its constitutional obligation.

#### Comoros

The Committee notes that the first report on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), due since 2016, has not been received. The Committee hopes that the Government will soon submit its report in accordance with its constitutional obligation.

## Congo

The Committee notes that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2016, has not been received. The Committee hopes that the Government will soon submit its report in accordance with its constitutional obligation.

## Cook Islands

The Committee notes that the first reports on the Right of Association (Agriculture) Convention, 1921 (No. 11), the Weekly Rest (Industry) Convention, 1921 (No. 14), the Forced Labour Convention, 1930 (No. 29), the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), and the Abolition of Forced Labour Convention, 1957 (No. 105), due since 2016, have not been received. The Committee hopes that the Government will soon submit these reports in accordance with its constitutional obligation.

## Dominica

The Committee notes with *deep concern* that, for the fifth year, the reports due on ratified Conventions have not been received. Twenty-six reports are now due on fundamental, governance and technical Conventions. Most of these reports should include information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit its reports in accordance with its constitutional obligation. The Committee recalls that the Government may avail itself of the technical assistance of the Office in this regard.

## Equatorial Guinea

The Committee notes with *deep concern* that, for the last 11 years, the reports due on the ratified Conventions have not been received. Fourteen reports are now due on fundamental and technical Conventions. Most of these reports should include information in reply to the Committee's comments. Of these 14 reports, two are first reports on the application of the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), and the Accommodation of Crews Convention (Revised), 1949 (No. 92), due since 1998. Recalling that technical assistance was provided on these issues in 2012, the Committee firmly hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Gabon

The Committee notes with *regret* that the first report on the Maritime Labour Convention, 2006 (MLC, 2006), due since 2016, and the first report on the Occupational Health Services Convention, 1985 (No. 161), due this year, have not been received. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Gambia

The Committee notes with *deep concern* that, for the sixth year, the reports due on the ratified Conventions have not been received. Eight reports are now due on fundamental Conventions, most of which should include information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit its reports in accordance with its constitutional obligation. The Committee recalls that the Government may avail itself of the technical assistance of the Office in this regard.

## Guinea-Bissau

The Committee notes with *concern* that, for the fourth year, the reports due on ratified Conventions have not been received. Twenty-five reports are now due on fundamental, governance and technical Conventions, most of which should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Guyana

The Committee notes with *regret* that, the first report on the Domestic Workers Convention, 2011 (No. 189), due since 2015, has not been received. The Committee hopes that the Government will soon submit its report in accordance with its constitutional obligation.

## Haiti

The Committee notes with *deep concern* that, for the fifth year, the reports due on ratified Conventions have not been received. Twenty-four reports are now due on fundamental, governance and technical Conventions, most of which

should include information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit its reports in accordance with its constitutional obligation. The Committee recalls that the Government may avail itself of the technical assistance of the Office in this regard.

## Malaysia

### Sabah

The Committee notes with *regret* that, for the second year, the reports due on ratified Conventions have not been received. Three reports are now due on technical Conventions, most of which should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Republic of Maldives

The Committee notes with *regret* that the first report on the Equal Remuneration Convention, 1951 (No. 100), due since 2015, and the first report on the Maritime Labour Convention, 2006 (MLC, 2006), due since 2016, have not been received. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation. The Committee also notes that during the discussion in the Committee on the Application of Standards, the Government indicated that reports on ratified Conventions had been prepared and would soon be provided to the Office.

## Nicaragua

The Committee notes with *regret* that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2015, has not been received. The Committee hopes that the Government will soon submit its report in accordance with its constitutional obligation.

## Saint Lucia

The Committee notes with *concern* that, for the fourth year, the reports due on ratified Conventions have not been received. Twenty-two reports are now due on fundamental and technical Conventions, most of which should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Saint Vincent and the Grenadines

The Committee notes with *concern* that, for the second year, the reports due on ratified Conventions have not been received. The first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2014, has also not been received. Nineteen reports are now due on fundamental, governance and technical Conventions, most of which should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Serbia

The Committee notes with *regret* that the first report on the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), due since 2016, has not been received. The Committee hopes that the Government will soon submit its report in accordance with its constitutional obligation.

## Solomon Islands

The Committee notes with *regret* that, for the second year, the reports due on ratified Conventions have not been received. Sixteen reports are now due on fundamental, governance and technical Conventions. They should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Somalia

The Committee notes with *deep concern* that, for the 12th year, the reports due on ratified Conventions have not been received. Sixteen reports are now due on fundamental and technical Conventions, some of which should include information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit its reports in accordance with its constitutional obligation. The Committee recalls that the Government may avail itself of the technical assistance of the Office in this regard.

## Timor-Leste

The Committee notes with *regret* that, for the third year, the reports due on ratified Conventions have not been received. Four reports are now due on fundamental Conventions, which should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Vanuatu

The Committee notes with *regret* that, for the second year, the reports due on ratified Conventions have not been received. Seven reports are now due on fundamental Conventions, some of which should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Viet Nam

The Committee notes with *regret* that the first report on the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), due since 2016, has not been received. Only four reports have been received of the 12 requested (eight reports are still due on fundamental, governance and technical Conventions). They should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Yemen

The Committee notes with *concern* that, for the third year, the reports due on ratified Conventions have not been received. Twenty-one reports are now due on fundamental, governance and technical Conventions, most of which should include information in reply to the Committee's comments. The Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation.

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Albania, Bahamas, Barbados, Benin, Botswana, Brunei Darussalam, Cabo Verde, Chad, China, Democratic Republic of the Congo, Eritrea, Estonia, Grenada, Iraq, Jamaica, Kiribati, Kyrgyzstan, Liberia, Libya, Madagascar, Malawi, Malaysia, Malaysia: Peninsular Malaysia, Malaysia: Sarawak, Mexico, Mozambique, Netherlands: Aruba, Netherlands: Curaçao, Pakistan, Romania, San Marino, Sierra Leone, Singapore, South Sudan, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Uganda, United Kingdom: Anguilla.*

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

### Algeria

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

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017, which refer to the interventions of the Employer members during the discussion of the application of the Convention by Algeria in the Committee on the Application of Standards of the International Labour Conference at its last session in June 2017, as well as the conclusions adopted by the Conference Committee following the discussion. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to legislative issues, most of which are already under examination by the Committee, and which denounce the persistent violations of the Convention in practice, particularly the reprisal measures by the employer following protest actions by the Autonomous National Union of Electricity and Gas Workers (SNATEGS) and police violence during demonstrations in the mining sector. The Committee notes the information provided by the Government in October 2017 in reply to the ITUC, both on certain legislative and practical issues. It notes in particular the reply concerning the dispute in the mining sector and observes that the SNATEGS presented a complaint to the Committee on Freedom of Association in April 2016 concerning serious violations of its trade union rights (Case No. 3210). In the light of the seriousness of the allegations and pending the examination of the case by the Committee on Freedom of Association, the Committee recalls that the ILO supervisory bodies have 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 (see General Survey on the fundamental Conventions, 2012, paragraph 59). *The Committee expects that the Government will ensure respect of this principle.*

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion held in the Conference Committee in June 2017 concerning the application of the Convention by Algeria. The Committee notes that, in its conclusions, the Conference Committee requested the Government to: (i) ensure that the registration of trade unions in law and in practice conforms with the Convention; (ii) process pending applications for the registration of trade unions which have met the requirements set out by law and notify the Committee of Experts of the results in this regard; (iii) ensure that the new draft Labour Code is in compliance with the Convention; (iv) amend section 4 of Act No. 90-14 in order to remove obstacles to the establishment by workers' organizations of federations and confederations of their own choosing, irrespective of the sector to which they belong; (v) amend section 6 of Act No. 90-14 in order to recognize the right of all workers, without distinction on the basis of nationality, to establish trade unions; (vi) ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers; and (vii) reinstate employees of the Government, terminated based on anti-union discrimination. Lastly, emphasizing that the progress made in the application of the Convention remained unacceptably slow, the Conference Committee requested the Government to accept a direct contacts mission which should, as of the current year, report progress to the Committee of Experts. Noting that the direct contacts mission has not yet been conducted, the Committee notes the detailed information provided by the Government in October 2017 in response to the conclusions of the Conference Committee. *While noting the information provided by the Government, the Committee hopes that the Government will accept in the near future the direct contacts mission to examine the measures taken and the progress achieved on issues relating to the application of the Convention.*

#### **Legislative issues**

*Amendment of the Act issuing the Labour Code.* The Committee recalls that the Government has been referring, since 2011, to the process of reforming the Labour Code. In this regard, in its reply to the conclusions of the Conference Committee, the Government indicates that the latest version of the draft of the new Labour Code has been transmitted to the independent trade unions for their opinion, and to local government sector departments. *Noting that the process has not yet been completed despite the passage of time, the Committee urges the Government to take all the necessary measures with a view to completing, without any further delay, the reform of the Labour Code. The Committee, in a request addressed directly to the Government, is making comments on the 2015 version of the draft text relating to the application of the Convention, which it expects the Government will take duly into account in the adoption of the requested amendments.*

With regard to the other legislative issues raised in its previous comments, the Committee notes the absence of any tangible measure by the Government to implement the amendments requested since 2006. *The Committee expects the Government to take all necessary measures in the near future to adopt the requested amendments to the following provisions.*

*Article 2 of the Convention. Right to establish trade union organizations.* The Committee recalls that its comments focused on section 6 of Act No. 90-14 of 2 June 1990 on the exercise of the right to organize, which restricts the right to establish a trade union organization to persons who are originally of Algerian nationality or who acquired Algerian nationality at least ten years earlier. The Committee notes the Government's indication that the required period during which Algerian nationality must have been held has been reduced to five years and that this provision is currently being discussed with the social partners. ***The Committee trusts that the current discussions will shortly lead to the revision of section 6 of Act No. 90-14 to remove the requirement of nationality and ensure that the right of all workers is recognized, without distinction of this kind, to establish trade unions. The Committee also refers the Government to its comments in its direct request in which it asks the Government to amend the provisions in the draft bill issuing the Labour Code on the same issue.***

*Article 5. Right to establish federations and confederations.* The Committee recalls that its comments have related for many years to sections 2 and 4 of Act No. 90-14 which, read jointly, have the effect of restricting the establishment of federations and confederations in an occupation, branch or sector of activity. The Committee previously noted the Government's indication that section 4 of the Act would be amended to include a definition of federations and confederations. ***In the absence of information on any new developments in this regard, the Committee expects that the Government will undertake, as soon as possible, the revision of section 4 of Act No. 90-14 in order to remove any obstacles to the establishment by workers' organizations, irrespective of the sector to which they belong, of federations and confederations of their own choosing. The Committee also refers the Government to its comments in its direct request in which it asks the Government to amend the provisions of the draft bill issuing the Labour Code on the same issue.***

### **Registration of trade unions in practice**

The Committee recalls that its comments have related for several years to the issue of particularly long delays in the registration of trade unions and of the apparently unjustified refusal of the authorities for several years to register certain independent trade union organizations. The previous comments referred, in particular, to the situation of the General and Autonomous Confederation of Workers in Algeria (CGATA), the Autonomous Union of Attorneys in Algeria (SAAVA) and the Autonomous Algerian Union of Transport Workers (SAATT). Regarding the CGATA, the Government referred to the information provided by its representative to the Conference Committee that the organization had been invited, since 2015, to bring its fundamental texts into conformity with the law and that, up to now, the organization has not taken any measures to give effect to the request by the administration. The Committee notes that the Government has not provided the details requested on the nature of the amendments requested by the administration of the CGATA, nor any indication on the situation regarding the requests for registration of the SAAVA and the SAATT. ***The Committee urges the Government to guarantee the prompt registration of trade unions which have met the requirements set out by law and, if necessary, that the organizations in question are duly informed of the additional requirements that have to be met. Lastly, the Committee requests the Government to indicate as soon as possible any new developments concerning the registration process of the CGATA, the SAAVA and the SAATT.***

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

## **Angola**

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

The Committee notes the observations of the National Trade Union of Teachers (SINPROF) and Education International (EI), received on 1 September 2017, alleging the existence of anti-union reprisals by the Government in several provinces of the country. The Committee notes the observations of the National Union of Angolan Workers–Trade Union Confederation (UNTA–CS), received in December 2016, on matters which have already been examined by the Committee. ***The Committee requests the Government to reply to the observations of EI and SINPROF.***

*New General Labour Act.* The Committee takes due note of the new General Labour Act No. 7/2015, published on 15 June 2015, which repeals Act No. 2/00 of 11 February 2000.

*Article 4 of the Convention. Promotion of collective bargaining. Compulsory arbitration.* The Committee recalls that for several years it has been requesting the Government to take the necessary measures to amend sections 20 and 28 of Act No. 20-A/92 on the right to collective bargaining, which impose compulsory arbitration in terms contrary to the indications of the Committee. The Committee notes that section 273.2 of the new General Labour Act establishes that collective labour disputes shall be resolved through mediation, conciliation and voluntary arbitration, without prejudice to specific legislation, and also notes that section 293 establishes that collective labour disputes shall be settled preferably through voluntary arbitration. The Committee observes that the new General Labour Act repeals any provision contrary to it, and queries about the effect this general measure has on Act No. 20-A/92 concerning the right to collective bargaining, on which the Committee has commented. ***The Committee requests the Government to clarify whether the new General Labour Act repeals sections 20 and 28 of Act No. 20-A/92, which impose compulsory arbitration on an array of non-essential services, or whether these sections are still in force. The Committee recalls that compulsory arbitration in the***

*context of collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in the event of an acute national crisis.*

*Articles 4 and 6. Collective bargaining of civil servants not engaged in the administration of the State.* The Committee recalls that for several years it has been requesting the Government to take measures to ensure that the trade union organizations of civil servants who are not engaged in the administration of the State have the right to negotiate both wages and other terms and conditions of employment with their public employers. The Committee notes with **regret** that the Government has not provided information on this matter and that there have been no legislative changes in this respect. **Recalling that, under Articles 4 and 6 of the Convention, all civil servants other than those engaged in the administration of the State must be able to enjoy the right to collective bargaining, the Committee once again requests the Government to take the necessary measures to give effect to the aforementioned provisions of the Convention.**

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

## Bangladesh

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

The Committee takes due note of the observations of the International Organisation of Employers (IOE) received on 31 August 2017, containing the Employer statements made before the 2017 Conference Committee with regard to the individual case of Bangladesh. The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017. The Committee notes the Government's reply to both of these observations, as well as to those received from the ITUC in 2015 and 2016.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2017 concerning the application of the Convention. The Committee observes that the Conference Committee called upon the Government to: (i) ensure that the Bangladesh Labour Act and the Bangladesh Labour Rules (BLR) are brought into conformity with the provisions of the Convention regarding freedom of association, paying particular attention to the priorities identified by the social partners; (ii) ensure that the draft EPZ Labour Act allows for freedom of association for workers' and employers' organizations and is brought into conformity with the provisions of the Convention regarding freedom of association, with consultation of the social partners; (iii) continue to investigate, without delay, all alleged acts of anti-union discrimination, including in the Ashulia area, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and (iv) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law. The Conference Committee also urged the Government to continue to effectively engage in ILO technical assistance to address the above recommendations and to report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

*Civil liberties.* In its previous comments, having noted the serious incidents of violence, retaliation and harassment against workers alleged by the ITUC, the Committee requested the Government to provide detailed information on the outcome of investigations and trials into these allegations. The Committee notes the Government's reply to the allegations raised, as well as its general statement that all cases of alleged violence and harassment are investigated neutrally and impartially by the relevant authorities. The Committee observes, however, that the Government did not provide information on the investigations or any measures with respect to a number of specific allegations raised in the ITUC comments. The Committee further notes with **concern** the new allegations of arrest, detention, surveillance, violence and intimidation of workers contained in the 2017 ITUC communication. The Committee notes the Government's comments thereto and observes that no information was provided in respect of: (i) the alleged incidents of violence, intimidation and false criminal charges against 70 union leaders and their families in May 2017 in Chittagong; and (ii) the alleged police intervention in a labour training and intimidation of its participants in January 2017. The Committee also notes the Government's general statement that references to threats, physical assaults and other coercive measures contained in the ITUC communication are fabricated and are not based on facts. Recalling that it has been receiving serious allegations of violence against trade union members for a number of years and that allegations of systematic anti-union retaliation have also been addressed by the Committee on Freedom of Association (see 382nd Report of the Committee on Freedom of Association, Case No. 3203, paragraphs 170–171) and discussed in the Conference Committee, the Committee expresses **deep concern** at the continued violence and intimidation of workers and emphasizes in this regard 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. **The Committee urges the Government to provide information on the remaining specific allegations of violence and intimidation, including to report on prosecutions initiated,**

*convictions obtained, and criminal sanctions imposed for any past incidents, and to take all necessary measures to prevent such incidents in the future and ensure that, if they occur, they are properly investigated.*

*Article 2 of the Convention. Right to organize. Registration of trade unions.* The Committee had previously requested the Government to provide information on the reasons for which a high number of registration applications were refused in 2016, to continue to provide statistics on the registration of trade unions and the use of the online registration application and to take measures to ensure that the registration process is a simple formality. The Committee had also recalled the recommendations of the high-level tripartite mission to devise standard operating procedures (SOPs) and to establish a public database on registration. The Committee notes the Government's indication that: (i) the registration process is clearly spelled out in the law and the reasons for rejecting an application are communicated to the applicant within 60 days; (ii) trade union registration increased remarkably after the 2013 amendment of the Bangladesh Labour Act, 2006 (BLA) – before the amendment, there were 6,726 registered trade unions in the country and 161 federations, whereas as of July 2017, the numbers increased to a total of 7,779 registered trade unions and 175 federations, with a membership of 2,917,627 workers; (iii) in the ready-made garment (RMG) sector, 470 new trade unions and 48 federations were registered between 2013 and 2017, bringing the total number of registered trade unions to 602; (iv) since the beginning of 2017, the registration rate in Dhaka was 75 per cent; (v) the online registration system guarantees transparency and deprives the Joint Director of Labour (JDL) of any discretionary power; (vi) since March 2015, a total of 801 online applications were received through the online system, out of which 291 were granted; (vii) a public database on union registration, developed with the support of the ILO Country Office, is available on the website of the Directorate of Labour (DoL) and contains relevant information regarding registration of trade unions, including reasons for rejecting an application; (viii) as of August 2017, the information on the status of 191 applications for registration was made available in the database, out of which 129 were accepted and 62 rejected; (ix) SOPs for trade union registration, developed in consultation with the concerned stakeholders, were adopted in May 2017 and introduced specific time frames within which each step of the registration process – examination, rectification and decision – must be completed; (x) the SOPs should expedite the registration process and increase its transparency; and (xi) the JDL has already started using the SOPs and training for internal staff has begun. The Government adds that it has also initiated the *upgradation* of the Directorate of Labour to a Department, which will result in an increase of manpower from 712 to 921 and that this process is at the final stage pending approval by the highest authority.

The Committee takes note of the detailed information provided by the Government and notes with *interest* the creation of a public database on union registration and the adoption of the SOPs on registration, both of which have the potential to improve the rapidity and transparency of the registration procedure. The Committee also welcomes the envisaged increase of manpower of the DoL. While further noting the reported increase in the number of registered trade unions and federations, the Committee observes from the information provided by the Government that a mere 36 per cent of applications for registration submitted through the online registration system (291 out of 801) were accepted, whereas the status of the remaining 64 per cent is unclear, and that more than a third of the applications for registration available in the database on registration (62 out of 191) are marked as rejected without a clear indication as to the reasons. Furthermore, the Committee notes that, according to the ITUC, obstacles to registration remain: the JDL retains discretionary power to refuse registration; in 2017, 22 out of 50 applications in the RMG sector were so far rejected and in Chittagong, 15 out of 20 applications were rejected; and trade unions in many sectors face repeated refusal of registration. The Committee further observes that the Committee on Freedom of Association also examined allegations of continued arbitrary denial of trade union registrations and noted with concern the severe implications that the alleged recurrent practice of factory management to seek injunctive relief from the courts to stay union registrations that have been properly granted, thus freezing union activities for prolonged periods of time, may have on the functioning of trade unions (see 382nd Report of the Committee on Freedom of Association, Case No. 3203, paragraphs 172–173). ***Observing that the number of rejected applications for registration remains high, and that a substantial proportion of rejections come without explanation, the Committee requests the Government to continue to take all necessary measures to ensure that registration is a simple, objective and transparent process, which does not restrict the right of workers to establish organizations without previous authorization. The Committee expects that the use of the SOPs, the reduction of time limits for registration and the online database will have a positive impact on the registration rate of trade unions and requests the Government to provide all relevant statistics in this regard, including the average time taken for registration. The Committee also requests the Government to continue to provide updated statistics as to the overall number of applications for registration (whether online or otherwise) received, accepted and/or rejected, the reasons given for all rejections, and to clarify the status of the 509 applications submitted through the online system, which were not granted.***

*Minimum membership requirements.* In its previous comments, the Committee had requested the Government to take the necessary measures to review sections 179(2), 179(5) and 190(f) of the BLA with a view to their amendment so as to reduce the excessive 30 per cent threshold necessary for forming a union and maintaining its registration. The Committee notes the Government's indication that workers and employers have contradictory opinions with regard to the minimum membership requirement, as a result of which the Government placed the following proposals for amendment: repeal of section 190(f) of the BLA, which allows for cancellation of a trade union if its membership falls below the minimum membership requirements, and amendment to section 179(2) according to which the minimum membership requirement for trade union registration would depend on the total number of workers employed in an establishment: if

there are less than 2,000 workers in an establishment, the requirement would remain 30 per cent; for enterprises with 2,001 to 5,000 workers it would be 27 per cent; 5,001 to 7,500 workers – 24 per cent; and 7,501 workers or more – 20 per cent. While welcoming the Government’s attempt to reduce the minimum membership requirement and adapt it to the size of the enterprise, despite a lack of agreement among the social partners in this regard, the Committee *regrets* that the proposed amendments do not respond to its longstanding concerns and notes with *concern* that the minor reduction in the minimum membership requirements proposed by the Government is not likely to have an impact on a large number of enterprises and thus would not, in any meaningful manner, contribute to the free establishment of workers’ organizations. ***The Committee therefore urges the Government to continue to take the necessary measures to review sections 179(2) and 179(5) of the BLA without delay, in consultation with the social partners, with a view to truly reducing the minimum membership requirement. The Committee expects that the Government will engage in meaningful discussions with the social partners and that it will be able to report progress in this regard in the near future, in particular on any new proposals for reducing the minimum membership requirements. The Committee also requests the Government to provide information on the approximate number of enterprises falling within each of the mentioned enterprise categories for the purpose of establishing adequate minimum membership requirement and to indicate the sectors in which they operate.***

The Committee had also previously requested the Government to clarify whether Rule 167(4) of the BLR establishes a minimum membership requirement of 400 workers to establish an agricultural trade union, and if so, to align it with the BLA and in any event, to lower it to ensure conformity with the Convention. The Committee notes the Government’s indication that Rule 167(4) sets the requirement to form a trade union to 400 farm workers but that this issue has been resolved through a gazette notification dated 5 January 2017. ***Observing that it is unclear from the Government’s comments whether the requirement of 400 workers was repealed or lowered, the Committee requests the Government to clarify this point and to provide a copy of the gazette notification.***

*Articles 2 and 3. Right to organize, elect officers and carry out activities freely. Bangladesh Labour Act.* In its previous comments, the Committee had urged the Government, in consultation with the social partners, to take the necessary measures to review and amend a number of provisions of the BLA to ensure their conformity with the Convention. The Committee notes the Government’s indication that while the newly established Tripartite Technical Committee (TTC) met on several occasions to make suggestions on the possible amendment of the BLA, the latter being applicable to a large number of sectors, broad consultations with stakeholders are necessary and certain provisions are thus still under examination. The Government adds that a special committee headed by a senior government official was also established to coordinate and give suggestions for the final approval of amendments to the BLA and the draft Bangladesh Export Processing Zones Labour Act (EPZ Labour Act). The Government states that in November 2017, a further tripartite committee for amendment of the BLA was formed by the Ministry of Labour and Employment (MOLE) and prepared a report with recommendations on how to address the pending ILO observations. The Committee welcomes the Government’s efforts to review the BLA and notes the following proposed amendments: extension of the scope of the Act to certain industries previously excluded from it (repeal of clauses (e), (h) and (n) of section 2(4)); broadening of the definition of worker to include members of the watch and ward staff, firefighting staff and confidential assistant of any establishment (deletion of the corresponding restriction from section 175); clarification that workers in the informal sector do not need to provide identity cards issued by an establishment to apply for registration (section 178(2)(a)(iii)); replacement of the obligation to obtain approval from the Government by an obligation to inform the Government of any funds received from any national or international source, except the union dues (section 179(1)(d)); reduction of the time limit for the DoL to register a trade union (section 182(1), (2) and (4)); addition of section 182(7) instructing the Government to adopt SOPs for the registration of trade unions; repeal of section 184(2)–(4) and amendment of section 185 which impose excessive restrictions on organizing in civil aviation and for seafarers, including trade union monopoly; deletion of the possibility for the DoL to cancel trade union registration if it has been obtained by fraud or misinterpretation of facts (repeal of section 190(1)(c)); deletion of the possibility to cancel a trade union if, in an election for determination of collective bargaining agent, it obtains less than 10 per cent of the total votes cast (repeal of section 202(22)); and repeal of section 211(8) prohibiting strikes in an establishment for a period of three years from the commencement of its production.

While taking due note of these proposed amendments, the Committee observes that many of the changes it has been requesting for a number of years have either not been addressed or addressed only partially. In this regard, the Committee emphasizes once again the need to further review the BLA to ensure its conformity with the Convention regarding the following matters: (1) scope of the law – restrictions on numerous sectors and workers remain (sections 1(4), 2(49) and (65) and 175); (2) restriction on organizing in civil aviation (section 184(1)); (3) restrictions on organizing in groups of establishments (sections 179(5) and 183(1)); (4) restrictions on trade union membership (sections 2(65), 175, 193 and 300); (5) interference in trade union activity (sections 196(2)(a) and (b), 190(1)(d)–(e) and (g), 192, 229, 291 and 299); (6) interference in trade union elections (section 180(1)(a) read in conjunction with section 196(2)(d), and sections 180(b) and 317(4)(d)); (7) interference in the right to draw up constitutions freely (sections 179(1) and 188 (in addition, there seems to be a discrepancy as section 188 gives the DoL the power to register and, under certain circumstances, refuse to register any amendments to the Constitution of a trade union and its Executive Council whereas Rule 174 of the BLR only refers to notification of such changes to the DoL who will issue a new certificate)); (8) excessive restrictions on the right to strike (sections 211(1) and (3)–(4) and 227(c)) accompanied by severe penalties (sections 196(2)(e),

291(2)–(3) and 294–296); and (9) excessive preferential rights for collective bargaining agents (sections 202(24)(c) and (e) and 204). While further noting that the proposed amendments would decrease by half the maximum prison sentence imposed on workers for a series of violations – unfair labour practices, instigation and participation in an illegal strike or a go-slow and for participation in activities of unregistered trade unions (sections 291(2)–(3), 294–296 and 299) – the Committee recalls that it has been requesting the Government to eliminate such penalties from the BLA and to let the penal system address any possible criminal acts. The Committee also notes that the proposed amendment to section 210(10)–(12), which would enable the Conciliator to refer an industrial dispute to an arbitrator even if the parties do not agree, could result in compulsory arbitration contrary to the Convention. ***In view of the above and recalling the conclusions of the Conference Committee, the Committee urges the Government to take the necessary measures, in consultation with the social partners, to continue to review and amend the relevant provisions of the BLA in order to ensure that any restrictions on the exercise of the right to freedom of association are in conformity with the Convention. The Committee firmly hopes that the Government will be able to report progress in this regard in the near future.***

***Bangladesh Labour Rules.*** The Committee had previously requested the Government to review the following BLR provisions so as to ensure that workers' organizations are neither restricted nor are subject to interference in the exercise of their activities and internal affairs, that unfair labour practices are effectively prevented and that all workers, without distinction whatsoever, may participate in the election of representatives: Rule 188 (employer participation in the formation of election committees which conduct the election of worker representatives to participation committees in the absence of a union); Rule 190 (prohibition on certain categories of workers to vote for worker representatives to participation committees); Rule 202 (general restrictions on actions taken by trade unions and participation committees); Rule 350 (broad powers of inspection of the DoL); lack of provisions providing appropriate procedures and remedies for unfair labour practice complaints; as well as the possible impact of Rule 169(4), which limits eligibility to the union executive committee to permanent workers, on the right of workers' organizations to elect their officers freely. The Committee notes the Government's statement that since the BLA is under review, further amendments to the BLR may also be necessary. The Committee welcomes the Government's indication that that SOPs on unfair labour practices and anti-union discrimination were recently adopted to facilitate the handling and investigation of such allegations in a transparent manner and that the outcome of the investigations is available in a public database (this point is examined in more detail in the Committee's comments on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)). The Committee further notes that, as indicated by the ITUC, Rule 2 contains a broad definition of administrative and supervisory officers who are excluded from the BLA; Rule 85, Schedule IV, sub-rule 1(h) prohibits members of the Safety Committee from initiating or participating in an industrial dispute; and Rule 204 determines that only subscription-paying workers can vote in a ballot to issue a strike, whereas section 211(1) of the BLA refers to union members. In this regard, the Committee recalls that the rights under the Convention are granted to all workers without distinction or discrimination of any kind, including managerial and supervisory staff, and that matters of internal administration should be left to the discretion of the members of the trade union without any intervention by the public authorities. ***In the absence of any changes made to the mentioned provisions and recalling that the Conference Committee called upon the Government to ensure that the Bangladesh Labour Rules are brought into conformity with the Convention, the Committee reiterates its previous request and expects that during the revision process of the BLR, which should involve the social partners, its comments will be duly taken into account.***

***Right to organize in export processing zones (EPZs).*** In its previous comments, the Committee had requested the Government to revise the draft EPZ Labour Act so as to provide equal rights of freedom of association to all workers and bring the EPZs within the purview of the labour inspectorate. The Committee notes the Government's indication that the draft EPZ Labour Act was recalled from Parliament for a thorough review to align it with core ILO Conventions and that the Bangladesh Export Processing Zones Authority (Zone Authority) conducted a number of meetings, as a result of which Chapters IX, X and XV have been redrafted through tripartite consultations on the basis of ILO observations, as well as comments of collective bargaining agents and investors. The Government further indicates that some requested amendments were not taken into account due to the concerns raised by workers and investors and informs that: (i) both workers and investors agree that to ensure harmonious industrial relations in EPZs only one Workers' Welfare Association (WWA) should be formed within a company – as of November 2017, WWAs have been formed and are active in 74 per cent of eligible enterprises; (ii) a provision allowing formation of higher-level organizations through affiliation of WWAs within a Zone will be incorporated in the redrafted EPZ Labour Act, even though no WWA has expressed an interest in this respect and no practical effectiveness has been found of such further affiliation; (iii) to avoid any unrest relating to workers' benefits which vary from enterprise to enterprise, WWA activities should be kept within the territorial limit of the enterprise; (iv) both workers and investors considered it necessary to include a provision in the law enabling the Zone Authority to approve funds from outside the Zone so as to prevent funding for illegal and subversive activities, but funds from any legal source for the welfare of workers are never denied; (v) since a WWA is the collective bargaining agent for the whole industrial unit where it was created, election of its Executive Council is open to all workers and not only WWA members; (vi) although employers and investors in EPZs are not interested in forming higher-level organizations, their associations are allowed to do so through affiliation among themselves; (vii) the Zone Authority developed its own mechanism of labour inspection, which is effective, transparent, accountable and scalable and also assists workers and employers to solve disputes through the Alternative Dispute Resolution (ADR) method; (viii) through massive structural

changes, the administration system of the EPZs has been brought in line with the BLA and, similarly as under the Department of Inspection for Factories and Establishments (DIFE), an Additional Secretary of the Government will be the Inspector General; (ix) training programmes can be arranged to exchange information and technical know-how between the DIFE and the Zone Authority; and (x) both workers and investors are satisfied with the inspection and administration system of the EPZs and involvement of another authority could create dual administration issues, confusion among the parties and even unrest (234 WWAs and 335 investors provided their observations in writing regarding imposition of inspection other than the one conducted by the Zone Authority). The Committee welcomes the Government's efforts to align the draft EPZ Labour Act with the BLA and notes some of the proposed amendments, including simplification of the formation and registration of WWAs through the repeal of section 96(2)–(3) establishing an excessive referendum requirement to constitute a WWA; repeal of section 98 prohibiting to hold a new referendum to form a WWA during one year after a failed one; repeal of sections 99(2) and 101 authorizing the Zone Authority to form a committee to draft a WWA constitution and to approve it; and repeal of section 115(1) allowing for deregistration of a WWA at the request of 30 per cent of eligible workers even if they are not members of the association and of section 115(5) prohibiting the establishment of a new association within one year after such deregistration. ***The Committee further welcomes the Government's indication that a provision allowing for the formation of higher-level organizations within a Zone will be incorporated in the redrafted EPZ Labour Act. The Committee however recalls that to ensure full conformity with the Convention, it is also necessary to enable associations to affiliate beyond the Zone and engage with actors outside their Zone and enterprise. Therefore the Committee encourages the Government to add this to the list of proposed amendments (section 102(2) of the draft EPZ Labour Act currently restricts WWA activities to the territorial limits of the enterprise thus banning any engagement with actors outside the enterprise, including for training or communication, and section 102(4) prohibits association or affiliation with another WWA in the same Zone, another Zone or beyond the Zone and thus to form higher-level organizations).***

The Committee *regrets*, moreover, that many changes requested by the Committee are still not addressed by the proposed amendments and emphasizes the need to further review the 2016 draft EPZ Labour Act to ensure its conformity with the Convention regarding the following matters: (1) scope of the law – specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – section 2(49)) or from Chapter IX dealing with WWAs (members of the watch and ward, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts – section 93); (2) excessive minimum membership requirement to create a WWA – 30 per cent of eligible workers of the industrial unit have to demand formation of a WWA (sections 94(2) and 97(5)); (3) the imposition of association monopoly at enterprise and industrial unit levels (sections 94(6), 97(5), paragraph 2, (6)–(7), 100 and 101); (4) detailed requirements as to the content of the WWA's constitution which go beyond formal and may thus hinder the free establishment of the WWAs and constitute interference in the right to draw up constitutions freely (section 96(2)(e)–(f) and (p)); (5) limitative definition of the main functions of WWA members (section 102(3)); (6) prohibition to function without registration and to collect funds for such association (section 111); (7) interference in internal affairs by prohibiting expulsion of certain workers from a WWA (section 146); (8) broad powers and interference of the Zone Authority in internal union affairs by approving funds from an outside source (section 96(3)), approving any amendment in a WWA Constitution and Executive Council (section 99), arranging elections to the Executive Council of WWAs (section 103(1)) and approving it (section 104), determining the legitimacy of any WWA and its capacity to act as a collective bargaining agent (section 175(c)) and monitoring any WWA elections (section 185(1)); (9) interference in the election of officers through a mandatory opening of election of Executive Council members to all workers and not only WWA members (section 103(2)); (10) only workers having worked during a specific period of time at the enterprise can elect and be elected to the Executive Council (section 103(5)(b)–(d)); (11) restrictions imposed on the eligibility of workers to the Executive Council (section 107); (12) prohibition to hold an election to the Executive Council during a period of one year, if a previous election was ineffective in that less than half of the eligible workers cast a vote (section 103(2)); (13) legislative determination of the tenure of the Executive Council (section 105); (14) broad definition of unfair labour practices, which also include participation in any WWA activities without permission from the employer, and imposition of penal sanctions for their violation (sections 115(1), 115(2)(a) and (f), 150(2)–(3)); (15) excessive requirement to issue a strike notice (consent of three-quarters of members of the Executive Council – section 126(2)); (16) power of the Conciliator appointed by the Zone Authority to determine the validity of a strike notice, without which a lawful strike cannot take place (section 127(2)); (17) possibility to prohibit strike or lockout after 30 days or at any time if the continuance of the strike or lockout causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 130(3)–(4)); (18) possibility of unilateral referral of a dispute to the EPZ Labour Court which could result in compulsory arbitration (sections 130(3)–(5) and 143); (19) prohibition of strike or lockout for three years in a newly established enterprise and imposition of obligatory arbitration (section 130(9)); (20) possibility to hire temporary workers during a legal strike in cases where the Executive Chairman of the Zone Authority is satisfied that complete cessation of work is likely to have the risk of causing serious damage to the machinery or installation of the industry (section 114(1)(g)); (21) excessive penalties, including imprisonment, for illegal strikes (sections 154 and 155); (22) prohibition of activities not within the aims and objects of the association as specified in its Constitution and prohibition to form or maintain any linkage with any political party or any non-governmental organization, as well as possible cancellation of such association and prohibition to form a WWA within one year after such cancellations

(section 173(1)–(3)); (23) cancellation of a WWA on grounds which do not appear to justify the severity of the sanction (sections 109(1)(c)–(h), 173(3)); (24) power of the Government to exempt any owner, group of owners, enterprise or worker from any provision of the Act making the rule of law a discretionary right (section 179); (25) excessive requirements to form an association of employers (section 113(1)); (26) prohibition of an employer association to associate or affiliate in any manner with another association (section 113(2)); and (27) excessive powers of interference in employers’ associations’ affairs (section 113(3)). The Committee also notes that section 198 provides the possibility for the Zone Authority, with the approval of the Government, to establish regulations, which could further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference. The Committee further recalls its previous comments that Chapter XIV (previously Chapter XV) on administration and labour inspection runs counter to the notion of an independent public authority to apply the laws fairly. Finally, the Committee notes that while according to the information provided by the Government to the Conference Committee, administration and inspection of factories in EPZs would fall under the BLA, the information provided in the Government’s report suggests that despite structural changes being made, the administration and inspection in the EPZs will remain separate from those under the BLA. **Observing that a very large number of provisions would need to be repealed or substantially amended to ensure the compatibility of the draft EPZ Labour Act with the Convention and recalling the conclusions of the Conference Committee, the Committee requests the Government to continue to review the draft EPZ Labour Act, in consultation with the social partners, to address all the issues highlighted above and to bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate.**

**The Committee once again recalls the critical importance which it gives to freedom of association as a fundamental human and enabling right. In view of the Government’s commitment to uphold the workers’ rights to freedom of association and their right to strike for realizing their legal demands, expressed at the Conference Committee, the Committee expresses its firm hope that significant progress will be made in the very near future to bring the legislation and practice into conformity with the Convention.**

**Noting the Government’s request for additional assistance in strengthening its capacity to improve industrial relations at the enterprise level and to provide training for EPZ industrial relations officers and counsellors-cum-inspectors, the Committee hopes that the Office will continue to provide all technical support needed in this respect.**

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 referring to matters addressed below and the Government’s reply thereto. The Committee also notes the Government’s comments on the 2015 and 2016 ITUC observations submitted under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the information provided to the 2017 Conference Committee on the Application of Standards, when examining the individual case of Bangladesh under Convention No. 87, to the extent that they address matters falling within the scope of the present Convention.

**Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination.** In its previous comments, the Committee requested the Government to continue to provide training and capacity building to labour officers to bolster their capacity to inquire into allegations of anti-union discrimination and to provide detailed statistics on the number of complaints filed, their follow-up in the labour inspectorate and sanctions imposed. The Committee notes the Government’s indication that: (i) from 2013 to 2017, 112 complaints were lodged with the Joint Director of Labour (JDL), out of which 103 were settled (39 criminal cases filed and 64 complaints settled amicably) and nine are under investigation (in 2016, all 71 cases were settled, bringing the disposal rate to 100 per cent); (ii) an online database was created on the website of the Directorate of Labour (DoL) to make the process publicly available and more transparent and it currently contains information on the status of 76 cases of anti-union discrimination or unfair labour practices (51 settled cases and 25 ongoing); (iii) the database will include detailed information as to the evolution of the complaint, including time taken to resolve a case, remedies imposed, numbers of reinstatement with or without back pay, number of remedies accepted by the employer versus appealed to courts, time taken for judicial proceedings, percentage of cases where employers’ appeals succeeded and sanctions ultimately imposed; (iv) standard operating procedures (SOPs) for anti-union discrimination and unfair labour practices were recently adopted in order to facilitate and accelerate the handling and investigation of such allegations in a transparent manner following a uniform procedure, and will be piloted in 500 enterprises; and (v) the Government has initiated the upgrading of the DoL to a department, which will result in an increase of manpower from 712 to 921. The Committee further notes the detailed information provided by the Government on the type and number of training and capacity-building activities provided to labour officials, judges, lawyers, workers and employers on matters relevant to the Convention and welcomes, in particular, the specialized and regular training activities conducted to bolster the capacity of labour officials to investigate allegations of anti-union discrimination and unfair labour practices, to develop a credible, efficient and transparent system of arbitration and conciliation and to facilitate effective labour management relations, collective bargaining and prompt and efficient settlement of labour disputes. The Committee also notes the envisaged establishment of a Workers’ Resource Centre, which will act as a centre for excellence for training and awareness-raising of labour officials, workers and employers on conciliation, anti-union discrimination and unfair labour practices. **Noting with interest the development of the SOPs and the establishment of a publicly available database on anti-union discrimination, as well as the ongoing training**

*activities conducted for labour officials and the envisaged increase of manpower of the DoL, the Committee expects that all of these measures will contribute to an expedient, efficient and transparent handling of anti-union discrimination complaints.*

While taking note of the information provided on the number of complaints lodged to the JDL, the Committee observes that the Government did not indicate the particulars previously requested by the Committee in relation to the handling of complaints of anti-union discrimination and their follow-up in the labour inspectorate (time taken to resolve the disputes, remedies imposed, including the number of cases of reinstatement, the number of remedies accepted by the employers versus appealed to judicial proceedings, time taken for judicial proceedings and the percentage of cases where employers' appeals succeeded, and sanctions ultimately imposed following full proceedings) but notes that these elements are explicitly enumerated in the SOPs and should, according to the Government, form part of the online database. ***The Committee requests the Government once again to provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities and their follow-up, including all of the abovementioned elements, so as to demonstrate the effectiveness of the SOPs with regard to complaints of anti-union discrimination and unfair labour practices. Further observing that penalties envisaged for unfair labour practices and acts of anti-union discrimination are not sufficiently dissuasive (a fine of maximum 10,000 Bangladeshi taka (BDT) which equals US\$120 – section 291(1) of the Bangladesh Labour Act, 2006 (BLA)), the Committee requests the Government to take the necessary measures, after consultation with the social partners, to increase the penalties envisaged for such acts, so as to ensure their sufficiently dissuasive character. The Committee also requests the Government to indicate the outcome of the 39 mentioned complaints that gave rise to criminal cases.***

In its previous comment under Convention No. 87, the Committee had requested the Government to continue to provide information on the helpline for submission of labour-related complaints targeting the ready-made garment (RMG) sector in the Ashulia area and its expansion to other industrial sectors and geographical areas. The Committee notes the Government's indication that as of September 2017, a total of 2,068 complaints (mostly concerning issues of wages, overdue payments and job termination) were received from the RMG sector workers in Ashulia, out of which 501 were settled. The Government indicates that the Department of Inspection for Factories and Establishments (DIFE) is already dealing with complaints from other geographical areas and industrial sectors, that once sufficient experience is gained, the model will be formally expanded, and that a system is also being developed to prioritize, record and forward labour disputes to the relevant authority, as well as to update statistics to improve transparency and governance in dealing with complaints. ***Taking due note of this information, the Committee requests the Government to continue to provide detailed updates on the functioning of the helpline, including the number and nature of allegations raised, the nature of the follow-up to calls, including steps taken to prevent reprisals against helpline users and preserve their anonymity, the number and nature of investigations undertaken and their outcome. The Committee also requests the Government to clarify the status of the 1,567 complaints that have not been settled.***

The Committee further recalls that the Conference Committee had called on the Government to continue to investigate, without delay, all alleged acts of anti-union discrimination, including in the Ashulia area, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions according to the law. The Committee notes the Government's indication that: (i) the law enforcement authority is empowered to arrest any person considered to be involved in an unrest and seek redress through courts, which may result in an individual being arrested; (ii) the employer can terminate a worker if it is deemed appropriate following the legal procedures; and (iii) all those who were arrested after the Ashulia incident were released on bail, eight out of 11 cases were disposed of after investigation and the remaining three cases are being investigated. The Committee further notes the information provided by the Government on the role of the Ready-Made Garment Sector Tripartite Consultative Council (RMG TCC) in investigating allegations of anti-union violence and discrimination in two garment factories in Chittagong, in particular that a five-member tripartite investigating committee interviewed the concerned parties, examined relevant documents and prepared a final report and that the situation in the concerned garment factories is currently calm. The Committee also observes that, according to the ITUC, baseless criminal charges remain pending against workers for their involvement in the Ashulia incident and there is little prospect of reinstatement for workers not covered by the agreement concluded after the incident between the Government and IndustriALL. The ITUC also expresses concerns as to the long-standing pattern of unlawful and violent acts, including illegal dismissals of trade union leaders, in a garment group in Chittagong and alleges that the investigating committee established by the RMG TCC, despite being tripartite, showed serious flaws, irregularities and pro-management bias both in its investigating process and the final report. The Committee recalls in this regard that allegations of systematic anti-union retaliation were also addressed by the Committee on Freedom of Association (see 382nd Report of the Committee on Freedom of Association, Case No. 3203, paragraphs 170–171). ***The Committee requests the Government to take the necessary measures to ensure that any pending proceedings in relation to the Ashulia incident are concluded without delay and that all workers dismissed for anti-union reasons who wish to return to work are reinstated. The Committee requests the Government to provide information on any progress made in this regard. The Committee expects that any future investigations into concrete allegations of anti-union discrimination will be done in full independence and impartiality and that the Government will continue to take all necessary measures to prevent repeated and institutionalized acts of anti-union discrimination.***

In its previous comments, the Committee also requested the Government to provide information on the outcome of the judicial proceedings concerning dismissed workers in the mining sector who were charged with illegal activities (Case No. 345/2011). The Committee notes the Government's indication that while the first instance court acquitted the accused workers, an appeal for cancellation of this judgment was filed to the District Sessions Court, Dinajpur, and was granted but to date, the defendants have not attended court. ***The Committee requests the Government to provide information on the outcome of the case once the judgment of the District Sessions Court, Dinajpur has been rendered.***

***Protection of workers in export processing zones (EPZs) against acts of anti-union discrimination.*** In its previous comments, the Committee requested the Government to consider setting up a publicly accessible database specific to the EPZs to render the treatment of anti-union discrimination complaints more transparent; to clarify the role of counsellors-cum-inspectors in addressing such complaints; to provide the Bangladesh Export Processing Zones Authority (BEPZA or Zone Authority) circular on the application of section 62(2) of the Export Processing Zones Workers' Welfare Associations and Industrial Relations Act, 2010 (EWWAIRA); and to provide statistics on the number of anti-union discrimination complaints brought to the competent authorities, their follow-up and the remedies and sanctions imposed. The Committee notes the Government's indication that: (i) there are no reported cases of anti-union discrimination in the RMG sector but if evidence of such actions is found, appropriate action will be taken; (ii) no workers' welfare association (WWA) leader or member has ever been dismissed by the Zone Authority for the exercise of their labour rights, WWA members are protected under section 62(2) of the EWWAIRA and to avoid any discrimination, the Zone Authority conducts neutral investigations and personal hearings of the concerned workers, who also have full freedom to submit a complaint to the EPZ Labour Tribunals or the EPZ Labour Appellate Tribunal; (iii) counselor-cum-inspectors are engaged in regular monitoring of compliance issues and handling of labour disputes and there are currently 60 counsellors-cum-inspectors, three conciliators and a panel of arbitrators to resolve allegations of unfair labour practices; (iv) the labour inspection system established by the Zone Authority is effective, transparent, accountable and scalable and assists workers and employers in solving disputes through the Alternative Dispute Resolution (ADR) method; (v) through massive structural changes, the administration system of the EPZs has been brought in line with the BLA and both workers and investors are satisfied with the existing inspection and administration system and consider that involvement of another authority could create dual administration issues, confusion among the parties and even unrest; and (vi) as of May 2017, 161 cases were filed to the EPZ Labour Tribunals and the EPZ Labour Appellate Tribunal, out of which 86 were settled. ***Noting the Government's affirmation that there are no reported cases of anti-union discrimination in the RMG sector but observing that, to avoid discrimination, the Zone Authority conducts hearings of the concerned workers, the Committee requests the Government to clarify whether such hearings are done on a preventive basis or as a follow-up to complaints filed by workers. The Committee requests the Government once again to establish an online database for anti-union discrimination complaints specific to the EPZs, so as to ensure full transparency of the process, and to continue to provide statistics on the number of anti-union discrimination complaints brought to the competent authorities, their follow-up and the remedies and sanctions imposed. The Committee also requests detailed information on whether the Government's helpline for submission of labour-related complaints targeting the RMG sector is fully operational for EPZ workers. Further recalling that according to the information provided by the Government to the Conference Committee, administration and inspection of factories in EPZs would fall under the BLA, the Committee requests the Government once again to take the necessary measures to bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate. The Committee is also obliged once again to request the Government to provide a copy of the BEPZA circular on the application of section 62(2) of the EWWAIRA.***

The Committee further notes the Government's indication that Chapters IX, X and XV of the draft Bangladesh Export Processing Zones Labour Act (EPZ Labour Act) have been redrafted through tripartite consultations on the basis of ILO observations and comments of collective bargaining agents and investors but observes the need to continue to review the draft law to ensure its conformity with the Convention regarding the following matters: specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – section 2(49)) or from Chapter IX dealing with WWAs (members of the watch and ward, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts – section 93); power of the Executive Chairperson to rule on the legitimacy of a transfer or termination of a WWA representative (section 120); lack of specific measures to remedy acts of anti-union discrimination except in case of WWA officials covered by section 120; insufficiently dissuasive fines for unfair labour practices – a maximum of US\$600 (section 150(1)); and Chapter XIV (previously Chapter XV) on administration and labour inspection runs counter to the notion of an independent public authority to apply the laws fairly. In this regard, the Committee also refers to its detailed comments made under Convention No. 87. ***In view of the above, the Committee requests the Government to take the necessary measures, in the framework of the ongoing revision of the draft EPZ Labour Act and in consultation with the social partners, to ensure that all workers covered by the Convention are adequately protected against acts of anti-union discrimination, including through recourse to an independent authority, adequate remedies and sufficiently dissuasive sanctions.***

***Articles 2 and 3. Lack of legislative protection against acts of interference.*** For several years, the Committee has been requesting the Government, in consultation with the social partners, to review the BLA with a view to including adequate protection for workers' organizations against acts of interference by employers or employers' organizations, which would also cover financial control of trade unions or trade union leaders and acts of interference in internal affairs.

The Committee notes that the Government reiterates that legislative reform is a continuous process which has to take into account feedback from the stakeholders and the changing socio-economic context of the country. The Committee further notes the Government's indication that a Tripartite Technical Committee (TTC) was recently established to suggest and identify areas for amendment of the BLA and that after several meetings, an initial draft of the BLA was prepared. The Government states that in November 2017, a further tripartite committee for amendment of the BLA was formed by the Ministry of Labour and Employment (MOLE) and prepared a report with recommendations on how to address the pending ILO observations. While welcoming these initiatives to review the BLA, the Committee *regrets* that the proposed amendments do not address the Committee's long-standing concerns with regard to comprehensive protection against acts of interference and that, as a result, protection in this regard remains limited: section 202(13) of the BLA prohibits employer's interference in the conduct of elections for a collective bargaining agent and Rule 187(2) of the Bangladesh Labour Rules (BLR) prohibits interference in elections of workers' representatives to participation committees but these provisions do not cover all acts of interference prohibited under *Article 2* of the Convention. ***The Committee requests the Government to take all necessary measures to ensure that the need for explicit provisions granting full protection against acts of interference is given adequate attention in the ongoing review of the BLA, so as to ensure that workers' and employers' organizations are effectively protected against acts of interference both in law and in practice. The Committee expects that the social partners will be fully consulted in this process and firmly hopes that the Government will be able to report progress in this regard in the near future.***

*Lack of legislative protection against acts of interference in the EPZs.* In its previous comment, having observed that neither the EWWAIRA nor the EPZ Labour Act contained a comprehensive protection against acts of interference in trade union affairs, the Committee requested the Government to take the necessary measures, in consultation with the social partners, to review the relevant legislation in this respect. The Committee welcomes the initiative to review the EPZ Labour Act mentioned above and notes that while the draft contains certain provisions prohibiting interference by workers' and employers' organizations in each other's internal affairs (sections 114(1)(f) and 115(3)), they do not cover all acts of interference prohibited under *Article 2* of the Convention. ***The Committee requests the Government to take the necessary measures to continue to review the relevant legislation, in consultation with the social partners, so as to ensure a comprehensive protection against all acts of interference of workers' and employers' organizations in each other's establishment, functioning or administration, including acts designed to promote the establishment of workers' organizations under the domination of an employer, to support workers' organizations by financial or other means with the objective of placing them under the control of an employer or an employers' organization, to exercise pressure in favour or against any workers' organization, etc.***

*Article 4. Promotion of collective bargaining.* In its previous comment, the Committee requested the Government to provide information on the practical application of section 202A(1) of the BLA, which enables collective bargaining agents and employers to contact experts for assistance in collective bargaining. The Committee notes that the Government simply reiterates the content of the provision without providing any information as to its application in practice. ***The Committee, therefore, requests the Government once again to indicate whether and how section 202A(1) of the BLA has been used in practice in the context of collective bargaining.***

The Committee further notes the information provided by the Government in relation to the Committee's previous concerns as to the possible undermining of trade unions by participation committees, in particular that section 205(6a) of the BLA was adopted to redress the interests of workers in an establishment where there is no trade union and their function is thus to improve workers' welfare and not to substitute for trade unions, that under the proposed amendment to section 205 of the BLA, there will be no need to establish a participation committee where there is a trade union and that should any concrete allegations of participation committees undermining trade unions be brought to the Government's attention, it will take the necessary measures to remedy the situation.

The Committee also observes that, according to the ITUC, Rule 4(4) of the BLR gives the Inspector General total discretion to shape the outcome of service rules and determine their conformity with the law, whereas such rules are often the subject of collective bargaining in enterprises with trade unions, and that Rule 202, which prohibits certain trade union activities is drafted so broadly as to impinge on the right to freedom of association and collective bargaining, as any bargaining on wages, hiring and transfers could constitute a prohibited action. ***The Committee requests the Government to provide information on the application of Rule 202 in practice, in particular, to indicate whether collective bargaining has been prohibited, suspended or penalized as a result of the application of this provision and to ensure that Rule 4(4) is not used to limit collective bargaining in enterprises where trade unions are established.***

*Higher-level collective bargaining.* The Committee had previously requested the Government to consider, in consultation with the social partners, amending sections 202 and 203 of the BLA in order to clearly provide a legal basis for collective bargaining at the industry, sector and national levels and to continue to provide statistics on the number of higher-level collective agreements concluded, the areas of industry to which they apply and the number of workers covered. The Committee notes that the Government reiterates that there is no restriction on settlement of disputes and different issues through bipartite negotiation or conciliation at industry, sector or national levels and indicates that between September 2013 and 2016, 41 collective bargaining agreements were concluded. ***While taking note of the information provided, the Committee observes that no legislative changes have been introduced to the relevant provisions despite the ongoing review of the BLA and requests the Government once again to consider, in consultation***

*with the social partners, amending sections 202 and 203 of the BLA to clearly provide a legal basis for collective bargaining at the industry, sector and national levels. Further observing that the information provided by the Government lacks certain elements previously called for, the Committee requests the Government to continue to provide statistics on the number of higher-level collective agreements concluded (at the sectoral and national levels), the areas of industry to which they apply and the number of workers covered.*

*Determination of collective bargaining agents.* The Committee had previously noted that where there is more than one trade union in an enterprise, a collective bargaining agent will be determined, upon application by a trade union or the employer, through a secret ballot and that the trade union that secures the highest number of votes will be declared as the collective bargaining agent, providing that it obtains the votes of at least one third of the total workers employed in the establishment (section 202(15) of the BLA). The Committee had recalled that such percentage requirements for the recognition of a collective bargaining agent could impair in certain cases, in particular in large enterprises, the development of free and voluntary collective bargaining but had observed the Government's indication that the percentage requirement had been repealed. The Committee observes, however, that section 202(15) still provides that a trade union may not become a collective bargaining agent unless it obtains the votes of at least one third of the total number of workers employed in the establishment. ***The Committee therefore requests the Government to provide clarification on the exact requirements for a trade union to become a collective bargaining agent and recalls that if, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, unions should be able to bargain collectively, at least on behalf of their own members.***

*Compulsory arbitration.* The Committee observes that according to the proposed amendments to section 210(10)–(12) of the BLA, if an industrial dispute is not settled through conciliation, the conciliator shall refer the dispute to an arbitrator, whose award is final without any possible appeal. The Committee recalls in this regard that the imposition of arbitration with compulsory effects in cases where the parties have not reached an agreement is one of the most radical forms of intervention by the authorities in collective bargaining and is contrary to *Article 4* of the Convention which aims at promoting free and voluntary collective bargaining. Arbitration with compulsory effects should only be possible where both parties agree to it, or in essential services in the strict sense of the term, in disputes in the public service involving public servants engaged in the administration of the State (*Article 6* of the Convention) or in the event of acute national or local crisis. ***The Committee requests the Government to take the necessary measures to ensure that any proposed amendment takes into account the situations enumerated above.***

*Promotion of collective bargaining in the EPZs.* In its previous comment, the Committee requested the Government to provide examples of collective bargaining agreements concluded in the EPZs and to continue to provide statistics in this regard. The Committee notes the Government's indication that as of November 2017, WWAs have been formed and are active in 74 per cent of eligible enterprises and that during the last four years, WWAs submitted 411 charters of demands, all of which were settled amicably and agreements were signed, thus demonstrating that EPZ workers enjoy the right to collective bargaining. Further observing that section 175(c) of the draft EPZ Labour Act allows the Executive Chairperson of the Zone Authority to determine the legitimacy of any WWA and its capacity to act as a collective bargaining agent, the Committee recalls that the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity. ***The Committee requests the Government to provide information on any cases where the Executive Chairperson rejected the legitimacy of a WWA and its capacity to act as a collective bargaining agent, and further requests the Government to take the necessary measures to ensure that the determination of collective bargaining agents in EPZs is the prerogative of an independent body. The Committee requests the Government to continue to provide statistics on the number of collective bargaining agreements concluded in the EPZs and the number of workers covered, along with some sample agreements.***

***Emphasizing the desirability of providing equal protection to workers in EPZs and outside the zones in terms of the right to organize and bargain collectively, the Committee requests the Government to continue to review the draft EPZ Labour Act, in consultation with the social partners, to bring it in line with the BLA (as revised in line with the Committee's comments) and the Convention.***

*Articles 4 and 6. Collective bargaining in the public sector.* In its previous comments, the Committee requested the Government to provide details on the manner in which organizations of public servants not engaged in the administration of the State can bargain collectively and copies of any agreements reached. The Committee notes the Government's statement that in some public sector organizations, agencies and corporations, employees below the rank of officers who usually perform non-administrative jobs are allowed to negotiate through employees' associations, whose elected representatives can submit claims to the competent authority, which evaluates them in the socio-economic context of the country. According to the Government, this system of negotiation has been practiced for a long time without any major objection from the employees, an administrative appellate tribunal has been established to settle disputes in the public service and aggrieved persons may also appeal to High Courts and Supreme Courts. Observing that, according to the Government, collective bargaining only takes place in some public sector organizations and agencies and is only allowed for lower ranking officers, the Committee recalls that recognition of the right to collective bargaining is general in scope and all workers in the public and private sectors must benefit from it, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State. ***In view of the above, the Committee requests the Government to clarify what specific categories of workers in the public sector can bargain collectively and***

to indicate the criteria based on which this right is granted. The Committee requests the Government to take the necessary measures to endeavour to extend the right to collective bargaining to all public sector workers covered by the Convention and to provide examples of collective agreements concluded in the public sector.

## Barbados

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

The Committee notes with *regret* that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments initially made in 2013.

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2014. *The Committee requests the Government to provide its comments in this respect.*

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* The Committee had previously requested the Government to take all the necessary measures to ensure that in addition to covering cases of anti-union dismissals, a new legislation on employment rights would provide for adequate protection against all other acts of anti-union discrimination envisaged by *Article 1* of the Convention, as well as for adequate and dissuasive sanctions aimed at ensuring respect for the right to organize. The Committee notes that the Government indicates in its report that the Employment Rights Act has been passed in Parliament and is now awaiting proclamation. The Committee notes, however, that the Act covers only cases of anti-union dismissals (section 27) and further limits this protection to employees continuously employed for a period of over one year. The Committee recalls that adequate protection against acts of anti-union discrimination should not be confined to penalizing dismissal on anti-union grounds, but should cover all acts of anti-union discrimination (demotions, transfers and other prejudicial acts) at all stages of the employment relationship, regardless of the employment period, including at the recruitment stage. *The Committee reiterates its previous comments and requests the Government to amend the new Act in line with the above. It requests the Government to provide information on all measures taken or envisaged in this regard.*

The Committee further notes that while sections 33–37 of the Act provide for the possibility of reinstatement, re-engagement and compensation, the maximum amount of compensation awarded to workers who have been employed for less than two years is five-weeks wages, which, depending on the number of years of continuous employment, is increased by between two-and-a-half and three-and-a-half weeks wages for each year of that period (Fifth Schedule). The Committee considers that the prescribed amounts do not represent sufficiently dissuasive sanctions for anti-union dismissal. *It therefore requests the Government to take the necessary measures to amend the Fifth Schedule of the Act so as to bring the compensation amount to an adequate level, which would constitute a sufficiently dissuasive sanction for anti-union dismissals.*

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

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

## Belize

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

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2013. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 3 of the Convention. Compulsory arbitration.* In its previous observation, the Committee noted the Government's indication that, in the context of the process of reviewing labour legislation, the Labour Advisory Board (LAB) recommended that the Schedule to the Settlement of Disputes in Essential Services Act 1939 (SDESA) be amended so as to exclude from the list of services considered essential in the strict sense of the term, in respect of which the authorities may submit collective disputes to compulsory arbitration, and prohibit or bring an end to a strike: (i) the civil aviation and airport security services (AIPOAS); (ii) monetary and financial services (banks, treasury, Central Bank of Belize); (iii) the PAO Authority (pilots and security services); (iv) postal services; (v) the Social Security Scheme administered by the Social Security Board; and (vi) services through which petroleum products are sold, transported, loaded or unloaded.

*The Committee notes the Government's indication in its report that the LAB has concluded its review and that the Ministry of Labour will submit to the Attorney-General's Office the corresponding legal instructions, including the dissenting views expressed during the tripartite discussions. The Committee welcomes the tripartite initiatives in the process of discussing the amendment of the legislation and requests the Government to provide information in its next report on any developments in this respect.*

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

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

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2013. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the observations of the International Trade Union Confederation (ITUC) in 2014. *It requests the Government to provide its comments in this respect.*

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, the Committee noted that, according to the ITUC, there are cases of anti-union discrimination in the banana plantation sector and in export processing zones (EPZs), where employers do not recognize any unions. It also noted the Government's indication that the comments would be submitted to a Tripartite Body established in 2008 under the provisions of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act. The Committee notes the Government's indication in its report that the tripartite body has been meeting continuously and that the ITUC's allegations were submitted to it for review. The Committee also notes the Government's indication that employers in the banana sector and in EPZs are not above the law and that those who feel that their rights have been violated can have recourse to the judicial system. Finally, the Committee notes the establishment of the Southern Workers Union (SWU), which represents workers in the shrimp, banana and citrus sectors and which, together with the Belize Workers' Union (BWU), has developed a strategic plan to organize workers in EPZs. **The Committee requests the Government to provide statistics on the number of acts of anti-union discrimination that are denounced to the authorities in these sectors and on the outcomes of these denunciations.**

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee requested the Government to take measures to amend section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act, Chapter 304, which provides that a trade union may be certified as the bargaining agent if it is supported by at least 51 per cent of employees, as this requirement of an absolute majority may give rise to problems given that, if this percentage is not attained, the majority union would be denied the possibility of bargaining. The Committee notes the Government's indication that: (i) the Tripartite Body and the Labour Advisory Board have been engaged in discussions on a possible amendment to the Act; (ii) based on these consultations, it has been recommended to reduce to 20 per cent the trade union membership threshold required to trigger a poll, while retaining the requirement of a 51 per cent approval of those employees voting and to require a turnout at the poll of at least 40 per cent of the bargaining unit; and (iii) the Government and the National Trade Union Congress of Belize (NTUCB) are in agreement with the proposal, although the Belize Chamber of Commerce would prefer to maintain the status quo. **The Committee welcomes the initiatives taken by the Government to bring the legislation into conformity with the Convention and requests it to continue promoting dialogue and to provide information in its next report on any developments in this respect. The Committee reminds the Government that it may have recourse to technical assistance from the Office, if it so wishes.**

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

## Botswana

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

The Committee takes note of the observations of the International Organisation of Employers (IOE) received on 31 August 2017, containing the Employer statements made before the 2017 Conference Committee on the Application of Standards (hereinafter: Conference Committee) with regard to the individual case of Botswana. The Committee also notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2017, alleging dismissals of workers because of strike action, brutal repression by police of a peaceful picket organized in August 2016, and refusal to allow the Botswana Federation of Public Sector Unions (BOFEPUSU) to raise its concerns before Parliament as regards the proposed amendments affecting the public sector. **The Committee requests the Government to provide its comments in this regard. While noting the Government's comments in reply to the 2016 observations from Education International (EI) and the Trainers and Allied Workers Union (TAWU), the Committee is bound to reiterate its request to the Government to respond to the remaining observations made by: (i) the ITUC in 2016 (alleging lockout of workers in the mining sector); (ii) the ITUC and the Botswana Federation of Trade Unions (BFTU) in 2016 concerning new amendments of the Trade Disputes Act (TDA); (iii) the BFTU in 2016; (iv) the ITUC in 2014 (alleging violations of trade union rights in practice); (v) the TAWU in 2013 (alleging favouritism of certain trade unions by the Government); and (vi) the ITUC in 2013 (alleging acts of intimidation against public workers).**

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion that took place in the Conference Committee in June 2017 concerning the application of the Convention. The Committee notes that the Conference Committee called upon the Government to: (i) take appropriate measures that ensure that the labour and employment legislation grants members of the prison service the rights guaranteed by the Convention; (ii) ensure that the Trade Disputes Act (TDA) is in full conformity with the Convention, and engage in social dialogue, with the further technical assistance of the ILO; (iii) amend the Trade Unions and Employers Organisations (TUEO) Act, in consultation with employers' and workers' organizations, to bring the law into conformity with the Convention; and (iv) develop a time-bound action plan together with the social partners in order to implement these conclusions. The Conference Committee also urged the Government to continue availing itself of ILO technical assistance in this regard and to report progress to the Committee of Experts before its next meeting in November 2017.

The Committee **regrets** that, despite the above request of the Conference Committee, the Government's report has not been received.

*Article 2 of the Convention. Right to organize of prison staff.* In its previous comments, the Committee once again requested the Government to take the necessary measures, including the pertinent legislative amendments, to grant members of the prison service all rights guaranteed by the Convention. The Committee notes the Government's indication before the Conference Committee that prison officers in Botswana are classified as members of the disciplined forces and

are the custodians of public safety and security, and that the constitutionality of the exclusion of prison officers from the coverage of the TDA and the TUEO Act has been reaffirmed by the Court of Appeal; however, support or administrative staff are covered by the above legislation. While noting the classification at national level of the prison service as “disciplined force”, the Committee reiterates that the police, the armed forces and the prison service are governed by separate legislation, which does not provide members of the prison service with the same status as the armed forces or the police and emphasizes that the exception set out in *Article 9* of the Convention for the armed forces and the police is to be interpreted restrictively. ***The Committee requests the Government once again to take, within the framework of the ongoing labour law review, the necessary legislative measures to ensure that prison officers enjoy the right to establish and join trade unions. The Committee requests the Government to provide information on any developments in this regard.***

*Article 3. Right of workers’ organizations to organize their activities and formulate their programmes.* In its previous comments, the Committee noted with concern that section 46 of the new Trade Disputes Bill No. 21 of 2015 enumerated a broad list of essential services, and that in line with section 46(2), the Minister may declare any other service as essential if its interruption for at least seven days endangers the life, safety or health of the whole or part of the population or harms the economy. The Committee requested the Government to take the necessary measures to amend the Trade Disputes Bill to reduce the list of essential services accordingly. The Committee notes the Government’s statement before the Conference Committee that, while the interruption of certain services in some countries may only cause economic hardships, it can prove disastrous in others and rapidly lead to conditions that might endanger the life, personal safety or health of the population and stability of the country; that flexibility is necessary to take into account the socio-economic circumstances of the country; and that the original list of essential services in the TDA was adopted 25 years ago and has been amended in 2016 in response to new developments and the specific circumstances in the country. Recalling that essential services, in which the right to strike may be restricted or even prohibited, as is the case in Botswana, should be limited to those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the Committee highlights that, while the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service “essential”. The Committee therefore considers that certain services enumerated in section 46, including diamond sorting, cutting and selling services; teaching services; government broadcasting services; the Bank of Botswana; railways operation and maintenance services; public veterinary services; and services necessary to the operation of any of these services, do not constitute essential services in the strict sense of the term. ***Referring to the Conference Committee’s request to ensure that the TDA is in full conformity with the Convention, the Committee requests the Government to take the necessary legislative measures to ensure that the list in section 46(1) of the TDA is limited to essential services in the strict sense of the term, and invites the Government, with regard to the services mentioned above, to give consideration to the negotiation or determination of a minimum service rather than imposing an outright ban on industrial action.*** The Committee further notes the Government’s indication before the Conference Committee that legislative amendments have been introduced pursuant to the Court of Appeal ruling on the invalidity of statutory provisions, which gave the Minister the power to amend the list of essential services, since it was the role of Parliament to determine the list of essential services. ***The Committee requests the Government to provide a copy of the most up-to-date version of section 46(2) of the Trade Disputes Act.***

The Committee had also previously requested the Government to provide information on the progress made in relation to the amendment of section 48B(1) of the TUEO Act, which grants certain facilities (such as access to premises or representation of members in case of complaint, etc.) only to unions representing at least one third of the employees in the enterprise, and section 43 of the TUEO Act which provides for inspection of accounts, books and documents of a trade union by the Registrar at “any reasonable time”. The Committee notes the Government’s statement before the Conference Committee that several ILO missions had been undertaken in April 2017 following the Government’s request for technical assistance, that it was agreed that the main focus of the labour law reform would be the Employment Act and the TUEO Act, and that, while social dialogue and stakeholder involvement during this process are considered central to its success, there has not yet been the opportunity for open discussion thereon with the social partners. ***The Committee expects that, in the framework of the ongoing labour law reform, the abovementioned provisions of the TUEO Act will be amended, in full and frank consultation with the social partners, so as to bring these provisions into line with the Convention. The Committee requests the Government to provide information on any progress achieved in this regard and to provide a copy of the amended TUEO Act once adopted.***

The Committee further notes the Government’s indication before the Conference Committee that, following considerable consultation with public service unions, the new Public Service Bill is at the stage of publication in the Official Gazette, which will allow for further consultation and could result in further amendments prior to its consideration in Parliament. In light of the most recent ITUC observations, the Committee wishes to emphasize the value of prior detailed consultation with the relevant social partners (including BOFEPUSU) during the preparation of legislation affecting their interests. ***The Committee reiterates its request that the Government provide a copy of the Public Service Bill in its current form or, as the case may be, of the Public Service Act once adopted.***

***The Committee reminds the Government that it may continue to avail itself of technical assistance from the Office with respect to all issues raised in its present comments.***

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

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

The Committee notes the Government's comments on the observations made in 2016 by Education International (EI) and the Trainers and Allied Workers Union (TAWU). The Committee also notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning alleged cases of anti-union discrimination and obstruction to collective bargaining. ***The Committee requests the Government to provide its comments on these observations, as well as on the pending observations made by the Botswana Federation of Trade Unions (BFTU) in 2016, the ITUC in 2013 and 2014 and by the TAWU in 2013, alleging violations of the right to collective bargaining in practice.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

***Scope of the Convention.*** The Committee had previously requested the Government to amend section 2 of the Trade Disputes Act (TDA) and section 2 of the Trade Union and Employers' Organisations Act (TUEO Act), which exclude employees of the prison service from their scope of application, as well as section 35 of the Prison Act, which deprives members of the prison service from the right to unionize under the threat of being dismissed. The Committee notes the Government's indication that the prison service is part of the disciplined force and that amendments to the stated laws would not alter their situation, but that civilian personnel in prisons, governed by the Public Service Act and the Employment Act, are allowed to unionize and that 50 such workers are members of trade unions. As regards the Government's statement that the prison service is part of the disciplined force justifying its exclusion from the Convention, the Committee observes that while the prison service does form part of the disciplined force of Botswana together with the armed forces and the police (article 19(1) of the Constitution), each of these categories is governed by a separate legislation – the Prison Act, the Police Act and the Botswana Defence Force Act – and the Prison Act does not appear to provide members of the prison service the status of the armed forces or the police. The Committee, therefore, considers that the prison service cannot be considered to be part of the armed forces or the police for the purposes of exclusion under *Article 5* of the Convention. ***The Committee requests the Government once again to take the necessary measures, including the pertinent legislative amendments, to grant members of the prison service all rights guaranteed by the Convention. The Committee requests the Government to provide information on any developments in this regard.***

***Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.*** The Committee had previously examined the ITUC concern that if a union was not registered, its committee members were not protected against anti-union discrimination, and had recalled the importance of legislation prohibiting and specifically sanctioning all acts of anti-union discrimination as set out in *Article 1* of the Convention. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that all union committee members, including those of unregistered trade unions, enjoy an adequate protection against anti-union discrimination. The Committee ***regrets*** that the Government failed to provide any comments on this point and it underlines that the fundamental rights accorded by the Convention to members or officers of trade unions, such as protection against acts of anti-union discrimination, cover all workers wishing to establish or join a trade union; therefore, such protection should not be dependent on the registered or unregistered status of a trade union, even if the authorities consider registration to be a simple formality. ***In these circumstances, the Committee reiterates its previous request.***

***Articles 2 and 4. Adequate protection against acts of interference; promotion of collective bargaining.*** In its previous comments, the Committee had requested the Government to provide information on the progress made in respect to: (i) the adoption of specific legislative provisions ensuring adequate protection against acts of interference by employers coupled with effective and sufficiently dissuasive sanctions; (ii) the repeal of section 35(1)(b) of the TDA, which permits an employer or employers' organization to apply to the commissioner to withdraw the recognition granted to a trade union on the grounds that the trade union refuses to negotiate in good faith with the employer; and (iii) the amendment of section 20(3) of the TDA (this section read together with section 18(1)(a) and (e) allows the Industrial Court to refer a trade dispute to arbitration, including where only one of the parties made an urgent appeal to the Court for determination of the dispute) so as to ensure that the recourse to compulsory arbitration does not affect the promotion of collective bargaining. In this regard, the Committee recalls that compulsory arbitration is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), or in essential services in the strict sense of the term or in cases of acute national crises. The Committee further observes that a draft TDA Bill (Bill No. 21 of 2015) is in the process of being adopted but ***regrets*** that the Committee's comments have not been reflected in the draft Bill and that the Government fails to provide any information on this point. ***The Committee, therefore, reiterates its request to the Government and trusts that it will be able to observe progress in this regard in the near future. The Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes.***

The Committee had previously noted that, in terms of section 48 of the TUEO Act, as read with section 32 of the TDA, the minimum threshold for a union to be recognized by the employer for collective bargaining purposes is set at one third of the relevant workforce. It had therefore requested the Government to ensure that where no union represented one third of the employees in a bargaining unit, collective bargaining rights would be granted to all unions in the unit, at least on behalf of their own members. The Committee observes, however, that section 35 of the TDA Bill does not implement these changes but merely reproduces the text of section 32 of the TDA in this regard. Additionally, the Committee notes that section 37(5) of the draft TDA Bill also provides a one third minimum threshold requirement for union recognition at the industry level. The Committee recalls that the determination of the threshold of representativity to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. In this regard, the Committee considers that if no union in a specific negotiating unit meets the required threshold of representativity to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. ***Regretting that no information has been provided in this respect, the Committee requests the Government to take the necessary measures to ensure that if no union reaches the required threshold to be recognized as a bargaining agent, unions should be given the possibility to negotiate, jointly or separately, at least on behalf of their own members.***

*Collective bargaining in the public sector.* In its previous comments, the Committee requested the Government to clarify whether the provisions of the Public Service Regulations, 2011 (Statutory Instrument No. 50), providing for general conditions of service in the public sector (hours of work, shift work, weekly rest periods, paid public holiday, overtime and annual paid leave), constituted fixed conditions of service or rather minimal legislative protection clauses on the basis of which the parties are able to negotiate special modalities and additional benefits. The Committee notes the Government's indication that some provisions of the Instrument constitute fixed conditions of service while for others the parties may determine special modalities and additional benefits, as long as they are in conformity with the Public Service Act, 2008. However, the BFTU indicates that it is unclear from the Government's report which provisions are fixed and which are not. **Recalling that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are generally incompatible with the Convention 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, the Committee requests the Government to specify which provisions of the Public Service Regulations are not open for negotiation and invites the Government to reconsider the limitation imposed on the scope of collective bargaining for public sector workers not engaged in the administration of the State.**

The Committee further observes that a new Public Service Bill, 2016, is in the process of being adopted and should replace the Public Service Act, 2008, and that the TUEO Act is also in the process of being amended. **The Committee trusts that the Government will ensure full conformity of both the Public Service Bill, 2016, and the amended TUEO Act with the Convention. In this regard, the Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes.**

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

## Brazil

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

*Adoption of Act No. 13.467.* The Committee notes the joint observations of the International Trade Union Confederation (ITUC) and the Single Confederation of Workers (CUT), received on 1 September 2017, and the observations of the National Confederation of Typical State Carriers (CONACATE), received on 28 August 2017. The Committee notes that the two communications refer to the adoption, on 13 July 2017, of Act No. 13.467 to reform the Consolidation of Labour Laws (CLT) and the impact of the new Act on compliance with the Convention. The Committee notes that, in their observations, the trade unions referred to above state that: (i) new section 611-A of the CLT, which introduces into Brazilian law the general possibility, by means of collective bargaining, of derogations which reduce the rights and protection afforded by the labour legislation for workers is in violation of the provisions and purposes of the present Convention and of the Collective Bargaining Convention, 1981 (No. 154); (ii) subsection 2 of new section 611-A, by providing that the absence of compensatory measures is not a reason for the clauses of collective agreements and accords to be found void, even where they derogate from the rights set out in the law, shows that the new system established by Act No. 13.467 is not based on negotiation, but on the abdication of rights; (iii) new section 444 of the CLT is also in violation of the ILO Conventions referred to above as it permits individual derogations from the provisions of the law and of collective agreements for workers with a higher education diploma and who receive a salary at least two times higher than the ceiling for benefits from the general social security scheme; and (iv) the creation by new section 444-B of the CLT of the status of exclusive autonomous worker, allowing the status of dependent worker to be excluded even when the autonomous worker is engaged exclusively and permanently for an enterprise, denies this new category of worker the rights of freedom of association and collective bargaining recognized by the labour legislation. Finally, the trade unions emphasize that the legislative amendments introduced are unprecedented in their gravity and are contrary to the comments made by the Committee in its 2016 observation.

The Committee also notes the joint observations of the International Organisation of Employers (IOE) and the National Confederation of Industry (CNI), received on 1 September 2017, which also refer to the adoption of Act No. 13.467, in relation to which they indicate that: (i) the Act was preceded by a broad process of discussion, and the principal social partners in the country had the opportunity to be heard by Parliament; (ii) the Act is intended to strengthen collective bargaining and the application of Conventions Nos 98 and 154 by promoting free and voluntary collective bargaining and establishing greater legal security, by limiting the interventions of labour courts in relation to the matters agreed by the social partners; and (iii) it is not correct to state that the new Act strengthens collective bargaining to the detriment of workers' protection, as new section 611-A of the CLT provides that the content of collective agreements and accords must respect the over 30 labour rights recognized in the Brazilian Constitution.

*Article 4 of the Convention. Promotion of collective bargaining. Relationship between collective bargaining and the law.* The Committee notes that Act No. 13.467, adopted on 13 July 2017, revises many aspects of the CLT. The Committee also notes Provisional Measure No. 808 of the President of the Republic, of 14 November 2017, which provisionally amends certain aspects of Act No. 13.467. The Committee notes that, as indicated in the observations of the various social partners, under the terms of the new Act: (i) collective agreements and accords prevail over the provisions of the law in respect, among others, of a list of 14 subjects (section 611-A of the CLT); and (ii) in contrast, collective agreements and accords cannot suspend or reduce rights in relation to a closed list of 30 points (section 611-B of the CLT). The Committee notes that this closed list of 30 points is based on the labour provisions contained in the Brazilian Constitution. It also notes that the list of subjects in respect of which collective bargaining prevails over the law includes many aspects of the employment relationship and that this list, in contrast with the list set out in section 611-B, is merely

illustrative, inter alia, and that derogations by collective bargaining are therefore possible from all legal provisions, with the sole exception of the labour rights set out in the Constitution.

The Committee recalls that it emphasized in its previous comments, with reference to various bills that had been submitted to the Congress in 2015 and April 2016 that, although isolated legislative provisions concerning specific aspects of working conditions could, in limited circumstances and for specific reasons, provide that they may be set aside through collective bargaining, a provision establishing that provisions of the labour legislation in general may be replaced through collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining, as set out in the Convention. The Committee requested the Government to take fully into account the scope and content of *Article 4* of the Convention in this regard. The Committee notes with **concern** that new section 611-A of the CLT establishes as a general principle that collective agreements and accords prevail over the legislation, and it is therefore possible through collective bargaining not to give effect to the protective provisions of the legislation, with the sole limit of the constitutional rights referred to in section 611-B of the CLT. The Committee once again recalls in this regard that the general objective of Conventions Nos 98 and 154 and the Labour Relations (Public Service) Convention, 1978 (No. 151), is to promote collective bargaining with a view to agreeing on terms and conditions of employment that are more favourable than those already established by law (see the 2013 General Survey on collective bargaining in the public service, paragraph 298) and that the definition of collective bargaining as a process intended to improve the protection of workers provided for by law is recognized in the preparatory work for Convention No. 154, an instrument which has the objective, as set out in its preambular paragraphs, of contributing to the achievement of the objectives of Convention No. 98. ***In light of the above, while asking the Government to provide its comments on the observations of the social partners in relation to sections 611-A and 611-B of the CLT, the Committee requests the Government to examine, following consultation with the social partners, the revision of these provisions in order to bring them into conformity with Article 4 of the Convention.***

***Relationship between collective bargaining and individual contracts of employment.*** The Committee notes that, under the terms of new section 442 of the CLT, workers who have a higher education diploma and receive a wage that is at least two times higher than the ceiling for benefits from the general social security scheme (currently around 11,000 Brazilian reais (BRL), or approximately US\$3,390) will be able to derogate from the provisions of the legislation and collective agreements and accords in their individual contracts of employment. The Committee recalls that legislative provisions which allow individual contracts of employment to contain clauses contrary to those contained in the applicable collective agreements (although it is always possible for individual contracts of employment to contain clauses that are more favourable to the workers) are contrary to the obligation to promote collective bargaining, as set out in *Article 4* of the Convention. ***While requesting the Government to provide its comments on the observations of the social partners in relation to section 442 of the CLT, the Committee requests the Government to examine, after consulting the social partners, the revision of this provision so as to bring it into compliance with Article 4 of the Convention.***

***Scope of application of the Convention.*** The Committee notes the allegations made in the observations of the trade unions that the extension of the definition of autonomous worker, as a result of new section 444-B of the CLT, will have the effect of excluding workers covered by that definition from the trade union rights recognized in both the legislation and the Convention. ***Recalling that the Convention applies to all workers, with the sole possible exception of the police and the armed forces (Article 5) and public servants engaged in the administration of the State (Article 6), the Committee requests the Government to provide its comments on the observations of the trade unions in relation to the impact of section 444-B of the CLT. The Committee also requests the Government to provide information on the other aspects of Act No. 13.467 relating to the rights enshrined in the Convention.***

***The Committee invites the Government to provide in its next report a detailed reply to the present comments, as well as to the other points contained in the 2016 observation in relation to the Convention.***

***[The Government is asked to reply in full to the present comments in 2018.]***

## Cambodia

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

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2017.

The Committee takes note of the comments of the Government in reply to the 2016 observations from the International Trade Union Confederation (ITUC), which denounced that a large number of trade union leaders and activists had been charged with criminal offences for union activities since 2014, as well as that an increasing number of injunctions and requisition orders against trade unions and workers had been granted in labour disputes to restrict trade union activities and industrial action. The Government states that it is reviewing each case to determine its legal basis and verify whether it has been settled. As to cases under court proceedings the Government indicates that it will report on the outcome once it receives final judgments. The Committee further notes the observations made by the ITUC received on 1 September 2017 on matters examined in this comment, as well as alleging a number of violations of the Convention in

practice, building on its previous observations and denouncing the criminalization of trade union activities through harassing lawsuits, arrests and long-pending trials before courts whose independence is questioned. The ITUC further alleges the use of short-term contracts to terminate employment of trade union leaders and members so as to weaken active trade unions. In addition, according to the ITUC, the zero draft of the Minimum Wages Law (2016) contains provisions which prohibit legitimate trade union activities. ***The Committee notes with concern the seriousness of these allegations and requests the Government to provide its comments on the 2016 and 2017 ITUC observations, in particular on the specific cases mentioned and the outcome of any pending court proceedings, as well as on the allegations of extended use of short-term contracts to undermine freedom of association, and of provisions in the draft law on the minimum wage criminalizing legitimate trade union activities concerning the discussion and setting of the minimum wage.***

The Committee also takes note of the report of the direct contacts mission (DCM) that visited the country from 27 to 31 March 2017, following a request by the Conference Committee on the Application of Labour Standards in June 2016.

### ***Follow-up to the discussion of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)***

The Committee notes the discussion that took place in the Conference Committee in June 2017 concerning the application of the Convention by Cambodia. The Committee notes that, in its conclusions, the Conference Committee requested the Government to: (i) ensure that freedom of association can be exercised in a climate free of intimidation and violence against workers, employers and their respective organizations; (ii) provide the reports of the three committees charged with investigations into the murders of, and violence perpetrated against, trade union leaders to the Committee of Experts, and ensure that the perpetrators and instigators of the crimes are brought to justice; (iii) ensure that acts of anti-union discrimination are swiftly investigated and that, if verified, adequate remedies and dissuasive sanctions are applied; (iv) keep under review the Trade Union Law, closely consulting employers' and workers' organizations, with a view to finding solutions that are compatible with the Convention; (v) ensure that workers are able to register trade unions through a simple, objective and transparent process; (vi) ensure that teachers, civil servants, domestic workers and workers in the informal economy are protected in law and practice consistent with the Convention; (vii) ensure that all trade unions have the right to represent their members before the Arbitration Council; (viii) complete, in consultation with workers' and employers' organizations, the proposed legislation and regulations on labour disputes, in conformity with the Convention, so as to ensure that the labour dispute settlement system has a solid legal basis that allows it to fairly reconcile the interests and needs of workers and employers involved in the disputes; and (ix) develop a roadmap to define time-bound actions in order to implement the conclusions of the Conference Committee.

The Committee notes the Government's indication that the Ministry of Labour and Vocational Training convened a tripartite meeting on 25 August 2017 to discuss actions to implement the conclusions of the Conference Committee and that, as a result, a roadmap was being prepared in consultation with the social partners. After the submission of its report the Government shared a draft roadmap with the ILO for its review and technical assistance. ***The Committee expects that, through comprehensive social dialogue and with the assistance of the ILO, the roadmap will soon be finalized to give full effect to the conclusions of the Conference Committee, and in this respect draws the Government's attention to the matters raised below.***

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

***Murders of trade unionists.*** With regard to its long-standing recommendation to carry out expeditious and independent investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007), the Committee had previously noted the Government's indication that an Inter-Ministerial Commission for Special Investigations was established in August 2015 to ensure thorough and expeditious investigations of these criminal cases, and that a tripartite working group attached to the Secretariat of the Commission was established thereafter in order to allow the employers' and workers' organizations to provide information in relation to the investigations and to provide their feedback on the findings of the Commission. The Committee notes that the Government indicates that it has been unable to expedite the investigations since it has been facing challenges, including the lack of collaboration from the victims' families, but that it is committed to undertaking all necessary measures and will continue undertaking its utmost efforts to conclude the investigations and bring the perpetrators and the instigators to justice. The Committee notes from the conclusions of the Committee on Freedom of Association in its examination of Case No. 2318 (see 383rd Report, November 2017) that the National Police Commissariat created an investigation taskforce in 2015, that the Inter-Ministerial Commission held a second meeting in January 2017 and that no progress is reported as to the operation of the tripartite working group. The Committee must express its ***deep concern*** with the lack of concrete results concerning the investigations. ***Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes in order to end the prevailing situation of impunity in the country with regard to violence against trade unionists, the Committee urges the competent authorities to take all necessary measures to expedite the process of investigation, and firmly requests the Government to keep the social partners duly informed of developments and to report on concrete progress.***

***Incidents during a demonstration in January 2014.*** In its previous observations, the Committee requested the Government to provide information on any conclusions and recommendations reached by the three committees set

up following the incidents that occurred during the strikes and demonstrations of 2–3 January 2014, which resulted in serious violence and assaults, death and arrests of workers as well as alleged procedural irregularities in their trial. The Committee had also noted that the ITUC maintained that the committees established to investigate the incidents were not credible, that an independent investigation into the events was still necessary and that those responsible for the acts of violence – which led to the death of five protesters and the wrongful arrest of 23 workers – must be held accountable. The Committee notes that the Government states that the conclusions of the three committees were submitted to the competent courts for further court proceedings and that the Government will not be able to provide them until they become available after conclusion of the court proceedings. The Committee also notes that the Committee on Freedom of Association Case No. 3121 (see 383rd Report, November 2017) urged the Government: (i) to clarify whether the specific allegations of killings, physical injury and arrest of protesting workers following the January 2014 demonstrations are being investigated in the context of the mentioned fact-finding committees and, if so, to provide the specific findings of the committees in this regard; and (ii) should the ongoing investigations not cover this issue, to institute an independent inquiry into the serious allegations without delay and to inform it of the outcome and the measures taken as a result. The Committee further notes that the DCM, recalling the importance of providing assistance and training to police forces with a view to ensuring their full respect for trade union rights, reminded the Government that it could avail itself of the technical assistance of the Office in this regard, with a view, for example, to the development of guidelines, a code of practice or a handbook on handling industrial and protest action. ***The Committee, recalling that the intervention of the police should be in proportion to the threat to public order and that the competent authorities should receive adequate instructions so as to avoid the danger of excessive force in trying to control demonstrations that might undermine public order, encourages the Government to consider availing itself of the technical assistance of the Office in relation to the training of police forces, with a view, for example, to the development of guidelines, a code of practice or a handbook on handling industrial and protest action.***

### Legislative issues

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* The Committee notes that the Government states that freedom of association is guaranteed to all workers through two pieces of legislation: (i) the Law on Trade Unions (LTU), applicable to the private sector – including domestic workers and workers in the informal economy meeting the LTU’s requirements to form a union; and (ii) the Law on Associations and Non-Governmental Organizations (LANGO) providing for the right to organize of judges, teachers and other civil servants – as well as domestic workers and workers in the informal economy that do not meet the requirements of the LTU. The Government also indicates that further measures will be undertaken through the roadmap to implement the conclusions of the Conference Committee. The Committee must recall once again that some provisions in the LANGO contravene freedom of association rights of civil servants under the Convention, as it lacks provisions recognizing to civil servants’ associations the right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, or the right to affiliate to federations or confederations, including at the international level, and subjects the registration of these associations to the authorization of the Ministry of Interior. While noting that the Government indicated to the DCM that registration can only be rejected if it endangers or adversely affects public safety or public order, the Committee must recall that these grounds afford the authorities a discretionary power that is incompatible with *Article 2* of the Convention and emphasizes in this regard the 2017 Conference Committee conclusion that the registration process must be simple, objective and transparent. The Committee further notes that the DCM observed in its conclusions that workers’ organizations and associations expressed deep concern at: (i) the lack of protection of teachers’ trade union rights (referring in particular to sanctions and threats to teachers seeking to organize); and (ii) the difficulties faced by domestic workers and workers in the informal economy in general seeking to create or join unions, since the LTU provides for an enterprise union model, whose requirements are often very difficult to meet by these workers, and does not allow for the creation of unions by sector or profession. In addition, the Committee notes the ITUC claim that the absence of any structure for sectoral representation results in the exclusion from the right to organize of hundreds of thousands of workers in the informal sector. ***The Committee must once again urge the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee further encourages the Government to promote the full and effective enjoyment of these rights by domestic workers and workers in the informal economy and, to this effect, submit to tripartite consultations in the context of the application of the roadmap to give effect to the conclusions of the Conference Committee, the possibility of allowing the formation of unions by sector or profession.***

*Article 3. Right to elect representatives freely. Requirements for leaders, managers, and those responsible for the administration of unions and of employer associations.* In its previous comments, the Committee had requested the Government to take the necessary measures to amend sections 20, 21 and 38 of the LTU – requiring those wishing to vote, to stand as a candidate for election, or be designated to leadership or management positions in unions or employer associations to meet a minimum age requirement (18), minimum literacy requirements and make a declaration that they have never been convicted for any criminal offence. The Committee notes that the Government states that the requirements of literacy and age are indispensable to ensure the sound and effective operation of worker unions. It also

indicates that a minor who is deemed emancipated and with soundness of mind, as stipulated under the Civil Code, will be able to have full legal capacity and be treated as having the minimum legal age (18 years old). The Committee welcomes the Government's indication that further discussions with the social partners will be conducted as recommended by the Committee. As to the minimum age and the literacy criteria, the Committee recalls once again that it considers to be incompatible with the Convention the requirements that candidates for trade union office should have reached the age of majority, or be able to read and write (see the 2012 General Survey on the fundamental Conventions, paragraph 104). Duly noting that the Government indicates that the civil code emancipation procedure already provides for the possibility to recognize full legal capacity to minors, the Committee considers that the Government could remove the age of majority requirement from the LTU for minors who have reached the statutory minimum age for wage employment (persons of 15 years of age, under section 177 of the Labour Law). Furthermore, the Committee recalls that it 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 (see General Survey, op. cit., paragraph 106). ***The Committee once again requests the Government to, in the context of its ongoing consultations on the application of the LTU, take the necessary measures to amend sections 20, 21 and 38 of the LTU to: (i) guarantee the right of minors who have reached the statutory minimum age for wage employment to be candidates for trade union office; (ii) to remove the requirement to read and to write Khmer from the eligibility criteria; and (iii) to ensure full respect with the abovementioned principle concerning disqualification from trade union office because of criminal offences.***

***Article 4. Dissolution of representative organizations.*** In its previous comments the Committee had requested the Government to amend paragraph 2 of section 28 of the LTU, providing that a union is automatically dissolved in the event of a complete closure of the enterprise or establishment. The Committee notes that the Government states that the provision is not contrary to the Convention as it only contemplates the automatic dissolution of the union resulting from the closure of its enterprise or establishment – and it does not constitute a decision of the administrative authority. The Committee observes in this regard that a union may have a legitimate interest to continue to operate after the dissolution of the enterprise concerned (for example, to defend any claims of its members). ***Recalling that the dissolution of a workers' or employers' organization should only be decided under the procedures laid down by their statutes, or by a court ruling, the Committee requests the Government to take the necessary measures to amend section 28 of the LTU accordingly by removing its paragraph 2.***

***Grounds to request dissolution by Court.*** In its previous comments the Committee had requested the Government to take the necessary measures to amend section 29 of the LTU, which affords any party concerned or 50 per cent of the total of members of the union or the employer association the right to file a complaint to the Labour Court to request a dissolution. The Committee notes that the Government states that the provision aims to ensure freedom of association as well as democracy and the interests of union members and recalls that only the Court has the full power to dissolve any trade union upon receiving a complaint. The Committee recalls once again that the manner in which members may request dissolution should be left to the organization's by-laws. ***The Committee requests the Government to take the necessary measures to amend section 29 of the LTU to leave to the unions' or employers' associations own rules and by-laws the determination of the procedures for their dissolution by their members.***

The Committee had further requested the Government to take the necessary measures to amend paragraph (c) of section 29, which provides that a union or an employers' association shall be dissolved by the Labour Court in cases where leaders, managers and those responsible for the administration were found guilty of committing a serious act of misconduct or an offence on behalf of the union or the employer association. The Committee notes that the Government states that: (i) the provision does not refer to any personal or individual offence of leaders or persons responsible for the administration of the union; and (ii) only offences committed by leaders and persons responsible for the administration on behalf of the trade union will lead to the dissolution of the trade union (in other words, the trade union itself must be held responsible for the serious offence committed). The Committee must recall that if it is found that trade union officers have committed serious misconduct or offences through actions going beyond the limits of normal trade union activity – including actions carried out on behalf of the trade union – they may be prosecuted under the applicable legal provisions and in accordance with ordinary judicial procedures, without triggering the dissolution of the trade union and depriving it of all possibility of action. ***The Committee requests the Government to take the necessary measures to amend section 29 of the LTU by removing its paragraph (c).***

### ***Application of the Convention in practice***

***Independent adjudication mechanisms.*** The Committee notes that the Government indicates that a draft of the Law on Procedure of Labour Disputes Judgement was completed in August 2017 and that, with the support from the ILO, a tripartite consultative workshop is to be conducted to discuss the draft and receive comments with a view to improving it further and with a view to submitting the draft law to Parliament for adoption by the end of 2017. The Government clarifies that the draft law also aims to strengthen and empower the Arbitration Council (AC). The Government states that it shares with social partners a recognition of the effectiveness of the AC, and that it intends to promote its role, including by empowering it to hear individual disputes. In this respect, the Committee takes note of the recommendations of the DCM, which, acknowledging the Government's commitment to strengthen the AC, trusted that all necessary measures would be undertaken to enable the AC to continue to be easily accessible and to play its important role in relation to the

handling of collective disputes and to ensure that its awards, when binding, are duly enforced (the DCM had observed that workers' organizations claimed that often the awards of the AC, even when legally binding, were not followed – a concern that is reiterated in the latest observations of the ITUC). The Committee further notes the serious concerns raised by the ITUC, as well as by national workers' organizations to the DCM, on the alleged lack of independence of the judiciary and its use to criminalize and curtail legitimate trade union activities. In this respect, the Committee recalls that one of the principal findings of the direct contracts mission, which visited the country in 2008, concerned the lack of an effective and impartial judiciary. The 2008 mission noted, in particular, that the judicial system's ability to discharge its mandate was compromised by lack of capacity, as evidenced by the fact that court decisions and proceedings were often unrecorded and unpublished, and that the judiciary was subject to political interference and has been unable to exercise its functions in an impartial and independent manner (see Case No. 2318, 351st Report, paragraph 250). The mission referred to the need to take the necessary steps to ensure the independence and effectiveness of the judicial system, including through capacity-building measures and the institution of safeguards against corruption. ***The Committee expects that the Government will take all necessary measures to complete expeditiously the adoption of the Law on Labour Procedure of the Labour Court, in full consultation with the social partners, in order to ensure the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes, as well as to address the serious concerns raised on the independence of the judiciary and its impact on the application of the Convention, through the measures outlined above. The Committee welcomes the Government's commitment to strengthen the AC and trusts that the Council will continue to remain easily accessible and to play its important role in the handling of collective disputes, and that any necessary measures will be undertaken to ensure that its awards, when binding, are duly enforced.***

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

## Central African Republic

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

*Articles 2, 3, 5 and 6 of the Convention. Labour Code.* In its previous comments, the Committee highlighted the need to amend the following legislative provisions:

- section 17 of the Labour Code, which limits the right of foreign nationals to join trade unions by imposing conditions of residence (two years) and reciprocity;
- section 24 of the Labour Code, which limits the right of foreign nationals to be elected to trade union office and executive functions by imposing a condition of reciprocity;
- section 25 of the Labour Code, which renders non-eligible for trade union office persons sentenced to imprisonment, persons with a criminal record or persons deprived of their right of eligibility under national law, even where the nature of the relevant offence is not prejudicial to the integrity required for trade union office;
- section 26 of the Labour Code, under which the union membership of minors under 16 years of age may be opposed by parents or guardians despite the minimum age for admission to employment being 14 years under section 259 of the Labour Code;
- section 49(3) of the Labour Code, under which no confederation may be established without the prior existence of occupational or regional federations.

In its previous comments, the Committee also noted the Government's earlier indication, in its report submitted in 2014, that the requested amendments to the Labour Code were the subject of an implementing decree which was in the process of being adopted. The Committee notes with ***regret*** the absence of any new information concerning this decree. The Committee notes the Government's indication that sections 17, 24 and 26 of the Labour Code are based on the provisions of the Criminal Code and the Code of Criminal Procedure and that section 25 of the Labour Code is based, among others, on the provisions of the Criminal Code, the Code of Criminal Procedure and section 4 of Order No. 3899/IGT/LS of 9 December 1953 on the institution of staff delegates in French Equatorial Africa. The Government indicates that when the national employment and training policy document was adopted in the last quarter of 2016 with ILO support, the participants recommended a review of the Labour Code in which the provisions conflicting with the relevant principles in certain Conventions would be subject to a specific examination. ***The Committee hopes that the Government will continue, in consultation with the social partners, the efforts made to complete this review and specific examination of the Labour Code and requests it to indicate any progress made in this regard.***

With respect to section 49(3) of the Labour Code, the Committee notes the Government's explanation that the confederations are central organizations which can only result from the grouping of regional and occupational federations.

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

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

*Article 2 of the Convention. Adequate protection against acts of interference. Section 30(2) of the Labour Code.* In its previous comments, the Committee considered that section 30(2) of the Labour Code does not cover all of the acts of interference prohibited by *Article 2* of the Convention. The Committee also noted the Government's indications that implementing regulations would be adopted to cover all of the acts of interference envisaged in *Article 2* of the Convention, and that these regulations would also specify the penalties applicable in cases of violations of section 30(2) of the Labour Code.

The Committee notes the Government's indication that section 152 of the Labour Code contributes to the protection of unionized workers against acts of interference by the employer by providing that terminations are unjustified when based on the opinions of the worker, the worker's trade union activities or membership or not of a specific union.

The Committee however observes that, in relation to the implementation of the Convention, section 152 of the Labour Code affords protection to workers in the event of the unjustified termination of the employment contract, including in cases of anti-union dismissal, but does not provide specific protection against acts of interference. ***The Committee therefore once again requests the Government to provide information on any progress achieved concerning the adoption, as previously announced, of regulations broadening the protection against the acts of interference set out in section 30(2) of the Labour Code and establishing penalties in this regard.***

*Article 4. Promotion of collective bargaining. Section 40 of the Labour Code.* In its previous comments, the Committee noted that, in accordance with section 40 of the Labour Code, collective agreements must be discussed by the delegates of employers' and workers' organizations belonging to the occupation or occupations concerned. Recalling that the level of bargaining should normally be a matter for the social partners themselves, the Committee requested the Government to indicate whether federations and confederations have the right to collective bargaining and to indicate the legislative provision which grants them this right.

The Committee notes the Government's affirmation that federations and confederations are included in occupational unions, which therefore gives them the right to negotiate collective agreements. The Committee notes this indication. ***However, observing that no provision of the Labour Code appears to explicitly recognize the right of federations and confederations to conclude collective agreements, the Committee requests the Government to provide copies of collective agreements negotiated and concluded by federations or confederations.***

*Sections 197 and 198 of the Labour Code.* In its previous comments, the Committee noted with regret that, under the terms of sections 197 and 198 of the Labour Code, representatives of trade union organizations and occupational groupings of workers (non-unionized) are on an equal footing in relation to collective bargaining. Recalling that *Article 4* of the Convention promotes collective bargaining between employers' and workers' organizations, the Committee had requested the Government to indicate the measures taken to ensure that occupational groupings of workers can only negotiate collective agreements with employers where no trade union exists in the bargaining units concerned.

***Noting the Government's indication that measures are currently being taken with a view to amending sections 197 and 198 of the Labour Code, the Committee hopes that the Government will be in a position to report in the near future specific progress in the amendment of the above legislative provisions with a view to ensuring that occupational groupings of workers can only negotiate collective agreements with employers when there is no union in the bargaining units concerned.***

*Sections 367 to 370 of the Labour Code.* In its previous comments, the Committee requested the Government to envisage amending sections 367 to 370 of the Labour Code, which appear to establish a procedure whereby all collective disputes are subject to conciliation and, failing resolution, to arbitration.

The Committee notes the Government's indication that the urgent procedure of attempted conciliation and arbitration envisaged in sections 367 et seq. of the Labour Code is intended to resolve disputes within a reasonable period. ***Recalling that, by virtue of the principle of the promotion of free and voluntary collective bargaining set out in Article 4 of the Convention, recourse to compulsory arbitration in the case of disagreement between the parties to collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term or in the event of an acute national crisis, the Committee reiterates its request for the amendment of sections 367–370 of the Labour Code.***

*Articles 4 and 6. Public servants not engaged in the administration of the State. Section 211 of the Labour Code.* In its previous comments, the Committee noted that section 211 of the Labour Code only provides for the right to collective bargaining in public services, enterprises and establishments for personnel not governed by specific conditions of service.

The Committee notes the Government's indication that the right to bargaining established in the Labour Code cannot be applied to all personnel in public services, enterprises and establishments, except for employees recruited under private law, as public servants are excluded from the scope of application of the Labour Code.

The Committee recalls that, under the terms of *Article 6* of the Convention, a distinction has to be made between, on the one hand, public servants who, through their functions, are directly engaged in the administration of the State (for

example, in certain countries, officials in government ministries and other similar bodies and their auxiliary personnel), who may be excluded from the scope of application of the Convention and, on the other, all other persons employed by the Government, public enterprises or autonomous public institutions, who should benefit from the guarantees set out in the Convention (for example, employees in public enterprises, employees in municipal services and employees in other decentralized bodies, as well as public sector teachers). ***Emphasizing that only public servants engaged in the administration of the State may be excluded from the scope of application of the Convention, the Committee requests the Government to indicate the categories of public sector workers who are subject to specific conditions of service, and accordingly excluded from the scope of application of the Labour Code, and to indicate any texts which may accord certain of these categories the right to negotiate their terms and conditions of work and employment.***

*Observations of the International Trade Union Confederation (ITUC).* In its previous comments, the Committee requested the Government to reply to the observations of the ITUC alleging the absence of collective bargaining in the wage determination process in the public sector and to indicate the measures taken to promote machinery for the negotiation of terms and conditions of employment in the public sector. The Committee notes with ***regret*** that the Government does not provide any information in this regard. ***While taking duly into account the difficulties currently experienced by the country, the Committee once again requests the Government to indicate the measures taken to promote machinery for the negotiation of terms and conditions of work and employment in the public sector.***

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

## Chad

### **Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1998)**

The Committee notes with ***concern*** that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2009.

*Article 1 of the Convention. Scope of application. Noting that section 3 of the General Public Service Regulations excludes from their scope of application local government officials, employees in public establishments and auxiliary personnel employed by the administration who are governed by a specific text, the Committee requests the Government to indicate the legal texts in force which recognize for all these categories of public employees, the rights and guarantees envisaged by the Convention. In so far as legal texts governing the specific conditions of service of these public employees grant them these rights and guarantees, the Committee requests the Government to provide copies thereof.*

*Article 4. Adequate protection against acts of anti-union discrimination.* The Committee notes that, while section 10 of the General Public Service Regulations provides that there may be no discrimination between public employees on the grounds of their trade union opinions, no provision in the Regulations, or in other texts applicable to public employees, establishes protection against discrimination in the exercise of trade union activities. ***The Committee urges the Government to take measures to include in the legislation provisions that explicitly provide adequate protection for public employees against discrimination on the grounds of their trade union membership or activities.***

*Article 5. Adequate protection against acts of interference. Noting that neither the General Public Service Regulations, nor other texts applicable to public employees, contain provisions prohibiting acts of interference by the public authorities in the internal affairs of unions, and recalling the need, in accordance with the Convention, to fully guarantee adequate protection for organizations against any acts of interference by public authorities in their establishment, operation and administration, the Committee urges the Government to take measures to include such protective provisions in the legislation.*

*Article 6. Facilities to be afforded to workers' representatives. Noting the absence of provisions in the General Public Service Regulations explicitly providing for such facilities, the Committee once again urges the Government to take measures, as required by the Convention, with a view to ensuring, through the adoption of legislative provisions or other means, that facilities are afforded to the representatives of recognized public employees' organizations in order to allow them to perform their functions promptly and efficiently both during working hours and at other times.*

*Article 7. Procedures for determining terms and conditions of employment. The Committee urges the Government to provide a copy of the Decree determining the composition, operation and appointment of the members of the Public Service Advisory Committee, and to indicate any consultations or agreement concluded with trade union organizations in the public sector over recent years.*

*Article 8. Settlement of disputes. Noting the absence of provisions in this respect, the Committee once again urges the Government to take measures to establish a procedure offering guarantees of independence and impartiality (such as mediation, conciliation or arbitration) with a view to settling disputes arising out of the determination of the terms and conditions of employment of public employees.*

***The Committee expects that the Government will take all the necessary measures without delay in consultation with the representative organizations concerned, and will act on the Committee's comments and accordingly give full effect to the provisions of the Convention.***

## China

### Macau Special Administrative Region

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

The Committee notes the observations of representative organizations of workers communicated with the Government's report, but observes that the Government does not indicate the names of these organizations. The Committee further notes the Government's reply to the 2014 observations of the International Trade Union Confederation (ITUC) but observes that the Government fails to address the alleged interference in trade union activities in the gaming sector and restrictions, in practice, on freedom to organize of migrant workers due to ineffective law enforcement. ***The Committee requests the Government to provide further comments on those specific allegations.***

*Articles 2 and 3 of the Convention. Right to organize of all categories of workers. Right of organizations to organize their activities.* The Committee recalls that it had previously noted the Government's indication that freedom of association, procession and demonstration, as well as the right and freedom to form and join trade unions and to strike is guaranteed to all Macao residents by section 27 of the Basic Law of the Macao Special Administrative Region, and that in line with section 2(1) of the Regulation on the Right of Association (Law No. 2/99) everyone can form associations freely and without obtaining authorization. It had also noted that two bills were in discussion in the Legislative Assembly – the Labour Relations Law and the Law on Fundamental Rights of Trade Unions. The Labour Relations Law was adopted in 2008 but does not include a chapter on the right to organize and collective bargaining. Noting that the draft Law on Fundamental Rights of Trade Unions, which would give effect to these rights, has been pending adoption since 2005, the Committee had requested the Government to provide information on any developments in relation to this draft Law and to take the necessary measures to ensure that the right to strike could be effectively exercised. It further requested the Government to adopt legislative frameworks that would allow part-time workers and seafarers, excluded from the application of the Labour Relations Law, to exercise the rights enshrined in the Convention.

The Committee notes the Government's indication that the draft Seafarers' Labour Relations Law is still under discussion to ensure its compatibility with the relevant international conventions and that in March 2014 and November 2015, representatives of employers and workers provided written comments on the draft Part-Time Labour Relations Law, but their opinions on the subject remain divergent and the Government is, therefore, conducting a comprehensive study and analysis to readjust the text and proceed to adoption as soon as possible. The Government further states that after six failed attempts between 2005 and 2015, the draft Law on Fundamental Rights of Trade Unions was again submitted to the Legislative Assembly in January 2016 but failed to pass because legislators considered that due to the current socio-economic situation, such legislation would be unfavourable to investment and unnecessary, as residents enjoyed freedom of association and the social partners communicated effectively through the tripartite Social Coordination Committee. The Committee notes, however, that according to representative organizations of workers, the Special Administrative Region lacks implementing regulations to put freedom of association into practice, resulting in insufficient protection of the relevant rights. They also consider that the Government has the responsibility to further promote legislative work on a trade union law, including by encouraging extensive public consultations and awareness raising on the importance and necessity of such legislation. ***Bearing in mind the concerns expressed by workers' organizations and recalling that the draft Law on Fundamental Rights of Trade Unions has been pending adoption for more than a decade, the Committee strongly encourages the Government to intensify its efforts to achieve consensus on the draft Law and to bring about its adoption in the near future. The Committee expects that this Law will explicitly grant the rights enshrined in the Convention to all categories of workers (with the only permissible exception of the police and the armed forces), including domestic workers, migrant workers, part-time workers, seafarers and apprentices, so as to ensure that freedom of association, including the right to strike, can be effectively exercised. The Committee requests the Government to provide information on any developments in this regard.***

***The Committee also requests the Government to provide information on developments regarding the adoption of legislative frameworks regulating rights of specific categories of workers excluded from the Labour Relations Law and expects that any such instruments will be in full conformity with the Convention.***

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

The Committee notes the observations of workers' organizations communicated with the Government's report but observes that the Government does not indicate the names of these organizations. The Committee further notes the Government's reply to the 2013 and 2014 observations of the International Trade Union Confederation (ITUC) but observes that the Government fails to address most of the issues raised in the latter observations, including allegations of unfair dismissals of union members and teachers, anti-union measures in the gaming sector and absence of collective bargaining. ***The Committee requests the Government to provide its comments on these specific allegations.***

*Legislative developments.* The Committee refers to its observations made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it recalls that while the Labour Relations Law, 2008, contains some provisions that prohibit anti-union discrimination and provide sanctions for such acts, it does not include a chapter on the right to organize and collective bargaining, and that the Legislative Assembly has not yet been able to adopt the draft Law on Fundamental Rights of Trade Unions. ***The Committee strongly encourages the Government to intensify its efforts in order to achieve the adoption, in the near future, of a legislation that would explicitly grant the various rights enshrined in the Convention and address the Committee's pending comments. The Committee requests the Government to provide information on any developments in this regard.***

*Scope of application of the Convention.* The Committee recalls that in its previous comments, after having observed that both seafarers and part-time workers were excluded from the Labour Relations Law, it had requested the Government to ensure that the legal frameworks to be adopted concerning these two categories of workers would allow them to exercise their right to organize and to bargain collectively. The Committee notes the Government's indication that the draft Seafarers' Labour Relations Law is still under discussion to ensure its compatibility with the relevant international Conventions and that in March 2014 and November 2015, representatives of employers and workers provided written comments on the draft Part-Time Labour Relations Law, but their opinions on the subject remain divergent and the Government is, therefore, conducting a comprehensive study and analysis to readjust the text and proceed to adoption as soon as possible. ***In light of the above, the Committee once again requests the Government to provide information on any developments regarding the adoption of legislative frameworks regulating the rights of seafarers and part-time workers and expects that any such instruments will, in full conformity with the Convention, allow these categories of workers to exercise their right to organize and to bargain collectively.***

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* Having previously noted that fines imposed by section 85(1)(2) of the Labour Relations Law for acts of discrimination against workers due to their union membership or the exercise of their rights might not be sufficiently dissuasive, particularly for large enterprises (from 20,000 to 50,000 Macau patacas (MOP) equivalent to US\$2,500–6,200), the Committee requested the Government to indicate the measures taken or envisaged to strengthen the existing sanctions. The Committee notes in this respect that the workers' organizations affirm in their observations that, especially in the context of the current social conditions, penalties for acts of anti-union discrimination and interference should be raised in order to enhance the intensity of deterrence and increase the costs of infringements. On the other hand, the Committee notes the Government's indication that: (i) section 85 establishes three categories of fines for minor infractions depending on their severity; (ii) deterrence of employees from exercising their trade union rights is punishable by the highest fine; (iii) if an act constitutes a criminal offence, the Penal Code will also apply; and (iv) the Labour Affairs Bureau investigates and follows up any labour dispute cases and if labour rights are found to have been impaired it opens a case and initiates investigations, so as to effectively safeguard the legitimate labour rights of employees. While taking due note of the Government's explanation, the Committee observes that the amount of fines which can be imposed for acts of anti-union discrimination has not been modified and, therefore, still appears to be insufficiently dissuasive, particularly for large enterprises. ***In light of the above, the Committee requests the Government to provide clarification on the use, if any, of other sanctions provided for in the Penal Code, to which the Government makes reference. The Committee requests the Government once again to take the necessary measures to strengthen the existing pecuniary sanctions applicable to acts of anti-union discrimination in order to ensure their sufficiently dissuasive character.***

The Committee further notes the Government's indication that section 70 of the Labour Relations Law, which allows rescission of contract without just cause accompanied by compensation, was amended in 2015 by increasing the maximum amount on which compensation is calculated. The Committee also notes in this regard that according to the 2014 ITUC observations, this provision is in practice used to punish union members when they take part in union activities or industrial actions. ***Recalling that anti-union discrimination is explicitly prohibited by section 6 of the Labour Relations Law and Article 1 of the Convention, the Committee requests the Government to take the necessary measures, including legislative, if necessary, to ensure that section 70 of this Law is not used for anti-union purposes.***

*Article 2. Adequate protection against acts of interference.* The Committee had previously noted that sections 10 and 85 of the Labour Relations Law did not explicitly prohibit all acts of interference as described in *Article 2* of the Convention, or guarantee adequate protection by means of dissuasive sanctions and rapid and effective procedures. The Committee had therefore requested the Government to take the necessary measures to amend the legislation so as to include express provisions to this effect. The Committee notes the Government's indication that: (i) section 4 of the Regulation on the Right of Association provides that any person who compels or intimidates another person to join or withdraw from an association can be subject to imprisonment of up to three years in line with section 347 of the Penal Code; (ii) workers may apply to court for protective or preventive measures if there is serious and irreparable damage to their rights (sections 25 and 26 of the Labour Procedure Code); (iii) labour proceedings triggered by unilateral termination of contract and requests for preventive measures are of an urgent nature allowing for prompt and effective handling of workers' labour rights (section 5 of the Labour Procedure Code and section 327 of the Code of Civil Procedure); and (iv) a Labour Tribunal was established in 2013 to deal with civil and minor violations and issues arising from labour law relations. While taking due note of this information, the Committee emphasizes the need for legislation to explicitly protect workers' and employers' organizations against any acts of interference by each other or each other's members,

including, for instance, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, and to make express provisions for rapid appeals procedures against such acts, coupled with effective and dissuasive sanctions. ***In light of these considerations, the Committee requests the Government to take the necessary measures to ensure that the relevant legislation includes provisions explicitly prohibiting acts of interference and providing for sufficiently dissuasive sanctions and rapid and effective procedures against such acts. The Committee also requests the Government to provide statistical information on the functioning, in practice, of the Labour Affairs Bureau and the Labour Tribunal, including the number of cases of anti-union discrimination and interference brought before them, the duration of the proceedings and their outcome.***

*Articles 1, 2 and 6. Protection of public servants not engaged in the administration of the State against acts of anti-union discrimination and interference.* Having observed that the General Provisions on the Personnel of the Public Administration in Macao did not contain any provisions against anti-union discrimination and interference, the Committee had previously requested the Government to indicate which provisions afford to public servants adequate protection against such acts and, if necessary, to take the necessary measures to amend the legislation accordingly. The Committee notes that the Government enumerates legislative instruments regulating the rights, obligations, rewards, penalties, promotion, appraisal and benefits of civil servants and indicates that participation of civil servants in trade union activities does not have any impact on their promotion, appraisal or benefits, let alone discrimination or interference. The Committee observes, however, that the Government does not point to any specific provisions that would explicitly provide protection to public servants against acts of anti-union discrimination and interference. ***In these circumstances, recalling that the scope of the Convention covers public servants not engaged in the administration of the State, the Committee requests the Government to take the necessary measures to amend the legislation so that it explicitly prohibits acts of anti-union discrimination and interference and grants public servants not engaged in the administration of the State adequate protection against such acts.***

*Articles 4 and 6. Absence in legislation of provisions on collective bargaining for the private sector and public servants not engaged in the administration of the State.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure the full application of *Article 4* of the Convention both in the public and private sectors. Recalling that the Labour Relations Law does not contain a chapter on collective bargaining and that the draft Law on Fundamental Rights of Trade Unions is still pending adoption, the Committee notes the Government's indication that despite the absence of legislation on collective bargaining, the Government will, in the formulation of relevant legislation and labour policies, consult and seek the views of the social partners, either through the tripartite coordination mechanism in the private sector or the permanent consultation mechanism established by the Civil Service Pay Review Council for civil servants. According to the Government, employers and workers also safeguard their respective rights and interests through the tripartite Standing Committee for the Coordination of Social Affairs. While recalling that collective bargaining referred to in the Convention is of a bipartite nature, the Committee notes the ITUC affirmation that this mechanism lacks transparency and fails to ensure balanced representation and consultation of independent trade unions. ***In light of the above, the Committee once again requests the Government to take the necessary measures in the very near future to ensure the full application of Article 4 of the Convention both for the private sector and public servants not engaged in the administration of the State, whether through the adoption of the draft Law on Fundamental Rights of Trade Unions or any other legislation, and to provide information on any developments in this regard.***

*Collective bargaining in practice.* ***The Committee requests the Government to provide statistics as to the number of collective agreements concluded, specifying the sectors concerned, their level and scope, as well as the number of enterprises and workers covered.***

## Comoros

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

The Committee notes the observations of the Workers' Confederation of Comoros (CTC), received on 1 August 2017, relating to matters examined by the Committee in the present observation, and it requests the Government to provide its comments in this regard. The Committee notes that, in response to the observations of the CTC in 2013, the Government indicates that the trade union leaders who had been dismissed have been reinstated. ***The Committee requests the Government to provide its comments on the other matters raised by the CTC, and particularly the allegations of employer pressure against trade union leaders of the CTC, the Union of Health and Education Workers and a new trade union in a communications enterprise to persuade them to end their trade union activities.***

*Articles 4 and 6 of the Convention. Promotion of collective bargaining in the private and public sectors (employees of public enterprises and public servants not engaged in the administration of the State).* In its previous comments, the Committee once again regretted the absence of progress in relation to collective bargaining which, according to the CTC, was not structured and had no framework at any level, and particularly that joint bodies in the public service had still not been established. The Committee notes that the CTC in its 2017 observations makes particular reference to decrees and implementing orders covering the Higher Council of the Public Service, the Joint Commission and the Medical

Commission established to provide a framework for bargaining, but which have still not been signed following their preparation in 2015, thereby opening the way for regulations and measures which are not in conformity with the law to the prejudice of employees of the public service. ***While taking note of the request made by the Government in its report for technical assistance, the Committee urges the Government to take the necessary measures to promote collective bargaining in both the private and the public sectors (employees of public enterprises and public servants not engaged in the administration of the State). The Committee requests the Government to provide information on this subject.***

The Committee notes the adoption of the Act of 28 June 2012 repealing, amending and supplementing certain provisions of Act No. 84-108/PR issuing the Labour Code.

The Committee is raising other matters in this regard in a request addressed directly to the Government.

## Congo

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the Government's reply to the allegations made by the International Trade Union Confederation (ITUC) in 2014 concerning a strike by teachers that reportedly resulted in: (i) the arbitrary arrest of teachers who are trade unionists by the Directorate-General for Territorial Surveillance (DGST); and (ii) the abduction in June 2013 of Mr Dominique Ntsienkoulou, a member of the Dialogue Group for the Redevelopment of the Teaching Profession (CRPE), by officials of the Provincial Directorate for Territorial Surveillance (DDST) and his subsequent disappearance. The Committee notes that, according to the Government: (i) the Directorate-General of the Police (and not the DGST) summoned the leaders of the CRPE to explain the reasons for their excessive action during the strike; and (ii) Mr Ntsienkoulou left his home on his own initiative and was never arrested, abducted or investigated by the national police services. In light of the divergent information provided by the ITUC and the Government, the Committee wishes to recall that the public authorities must not interfere in the legitimate activities of trade union organizations by subjecting workers to arrest or arbitrary detention, and that the arrest and detention of trade unionists, without any charges being brought or without a warrant, constitute a serious violation of the trade union rights enshrined in the Convention. ***The Committee trusts that the Government will ensure that these principles are fully respected and urgently requests it to further investigate the situation of Mr Ntsienkoulou, particularly as to his safety and whereabouts and to provide information in this respect.***

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

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

## Croatia

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

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

In its previous comments, the Committee requested the Government to provide comments on the observations of the International Trade Union Confederation (ITUC) received on 31 August 2016, of the Union of Autonomous Trade Unions of Croatia (UATUC) and the Independent Trade Unions of Croatia (NHS) received on 31 August 2016, and of the Association of Croatian Trade Unions (MATICA) received on 14 October 2016, as well as those received from the ITUC on 1 September 2014. ***The Committee requests the Government once again to provide a reply to the abovementioned observations, including on legislative matters and specific allegations of violations of the Convention in practice.***

***Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Rapid appeal procedures.*** Having previously noted the allegations of excessive court delays in dealing with cases of anti-union discrimination and the Government's information on a comprehensive process of judicial reform, the Committee had requested the Government to continue to provide details on measures envisaged or taken with a view to accelerating judicial proceedings in cases of anti-union discrimination, and to provide practical information including statistics concerning the impact of such measures on the length of the proceedings. ***In the absence of any new information in this regard, the Committee reiterates its previous request.***

***Articles 4 and 6. Promotion of collective bargaining in the public sector.*** In its previous comments, having noted that the Trade Union of State and Local Government Employees of Croatia (SDLSN) criticized the existing collective bargaining system for determination of the wage formation basis of civil servants in local and regional self-government units, the Committee had recalled that special modalities for collective bargaining in the public service, in particular as regards wage clauses and other clauses with budgetary implications, were compatible with the Convention, and had invited the Government to initiate a dialogue with the most representative workers' organizations in the local and regional self-government units of the public service, with a view to exploring possible improvements to the collective

bargaining system on the wage formation basis. *The Committee requests the Government to provide information on any progress made in this regard.*

The Committee had previously noted the allegations that the Act on the Realization of the State Budget, 1993, allowed the Government to modify the substance of collective agreements in the public sector for financial reasons. The Committee had also observed that the law was no longer in force and that it was standard procedure to adopt annually an Act on the Realization of the State Budget. Underlining the importance of ensuring that any future Act on the Realization of the State Budget does not enable the Government to modify the substance of collective agreements in force in the public service for financial reasons, the Committee had requested the Government to provide a copy of the Act on the Realization of the State Budget of the Republic of Croatia for 2014. *The Committee requests the Government to provide the latest Act on the Realization of the State Budget.*

*The Committee hopes that the Government will make every effort to take the necessary action with regard to the issues raised in the present comment in the near future.*

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

## Democratic Republic of the Congo

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

The Committee notes with *regret* that the Government's report has not been received. It also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference, owing to the failure to send reports and information on the application of ratified Conventions. *Noting that the Government received, in November 2017, technical assistance from the Office and the ILO International Training Centre in this regard, the Committee expects that the Government will be more cooperative in the future in fulfilling its constitutional obligations.* The Committee notes the observations of the International Trade Union Confederation (ITUC) in 2016, as well as in 2014 and 2013, which refer to the issues addressed in this observation and in the corresponding direct request, as well as issues concerning the application of the Convention in practice. *The Committee requests the Government to provide its comments in this regard.*

*Articles 2 and 5 of the Convention. Right to organize in the public service.* In its previous comments, the Committee asked the Government to take the necessary steps to ensure that the reform of the public administration and the revision of the conditions of service of career members of the public service enable the guarantees enshrined in the Convention to be afforded to all state employees. The Committee noted the Government's indication that the reform is still in progress but that the 2013 version of the draft revised conditions of service of career members of the public service had been approved by the general secretaries of the public administration to be submitted to Parliament for adoption. *The Committee once again expresses the firm hope that the Government will provide information in its next report on the adoption of new conditions of service of career members of the public service which secure the rights laid down in the Convention to all state employees.*

Furthermore, the Committee previously requested the Government to specify the instrument that safeguards the trade union rights of magistrates. The Committee noted that, according to the Government, the freedom of association of magistrates is recognized under the provisional Order of 1996 and that magistrates' trade unions exist. *The Committee requests the Government to provide information on the reform of the public administration and in particular to indicate whether provisions are envisaged to explicitly ensure that magistrates enjoy the rights laid down in the Convention.*

*Article 3. Right of foreign workers to hold trade union office.* The Committee notes the promulgation of Act No. 16/010 of 15 July 2016 amending and supplementing Act No. 015-2002 on the Labour Code. It notes with *regret* that new section 241 of the Labour Code continues the prior legislative requirement that eligibility for appointment to administrative or executive positions in trade unions is conditional on residence of 20 years. *Recalling that the national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see the 2012 General Survey on the fundamental Conventions, paragraph 103), the Committee requests the Government to take measures to amend, to this end, section 241 of the Labour Code, as revised by the Act of July 2016.*

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

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

The Committee notes with *regret* that the Government's report has not been received. It also notes that the Government was requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference due to the failure to provide reports and information on the application of ratified Conventions. *Noting that in November 2017 the Government received technical assistance from the Office and the*

*International Training Centre of the ILO on the subject, the Committee expects that the Government will be more cooperative in the future in fulfilling its constitutional obligations.*

The Committee recalls that its previous comments addressed the following points:

*Article 2 of the Convention. Protection against acts of interference.* The Committee previously recalled that, although section 235 of the Labour Code prohibits all acts of interference by employers' and workers' organizations in each other's affairs, section 236 provides that acts of interference shall be defined more precisely in an order. ***The Committee once again requests the Government to indicate any new developments regarding the adoption of the order in question, and expects that the Government's next report will indicate that specific progress has been made in this regard, in particular the inclusion of the various acts specified in Article 2 of the Convention.***

*Articles 4 and 6. Collective bargaining in the public sector.* In its previous comments, the Committee noted various agreements concluded between the administration and the trade unions representing public servants not engaged in the administration of the State. It concluded that, in practice, wage bargaining and agreements exist in the public sector. However, having noted that section 1 of the Labour Code expressly excludes from its scope career officials of the state public services governed by the general conditions of service and career employees and officials of state public services governed by specific conditions of service, the Committee requested the Government to take measures to ensure that the national legislation clearly guarantees the right to collective bargaining of all public servants not engaged in the administration of the State, as provided in *Articles 4 and 6* of the Convention. The Committee noted the Government's repeated indication that mechanisms for collective bargaining exist between public sector unions and the administration, such as the joint committee. ***The Committee is once again bound to repeat its request to the Government to establish explicitly in the national legislation, for example as part of the public administration reform under way, the right to collective bargaining of all public servants not engaged in the administration of the State, so that the legislation is consistent with the practice. Meanwhile, it once again requests the Government to provide information on all negotiations held in the joint committee.***

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

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

## Djibouti

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1978)**

*Article 3 of the Convention. Right of workers' organizations to organize their administration and activities in full freedom.* In its previous comments, the Committee asked the Government to indicate the reasons for the arrest at Djibouti airport in May 2014 of Mr Adan Mohamed Abdou, Secretary-General of the Labour Union of Djibouti (UDT), who was to attend the 103rd Session of the International Labour Conference (May–June 2014) as an International Trade Union Confederation (ITUC) observer, and whose travel documents and luggage were confiscated. The Government merely indicated that it does not recognize Mr Mohamed Abdou's status as a worker representative as he is an elected Member of Parliament. In its last report the Government indicates that it is in the process of gathering the necessary information to explain why Mr Mohamed Abdou was prohibited from leaving the country. The Committee recalls that leaders of organizations of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require; moreover, the free movement of these representatives should be ensured by the authorities. ***Noting with regret the failure to provide the requested information more than three years after the events, the Committee expects that the Government will indicate without delay the reasons why Mr Mohamed Abdou was prohibited from leaving the country, which prevented him from participating in the International Labour Conference in May and June 2014, and specify whether this prohibition has been lifted.***

*Trade union situation in Djibouti.* The Committee also notes the conclusions of the Credentials Committee at the 106th Session of the International Labour Conference (June 2017) regarding an objection concerning the nomination of the Workers' delegation of Djibouti. In this respect, the Committee notes with **concern** the Credentials Committee's indication that confusion continues to reign over the trade union landscape in Djibouti. The Credentials Committee particularly refers to the information provided by the appealing organizations indicating that the situation of trade unions has deteriorated and that the phenomenon of "clone unions" (trade unions established with the Government's support) now also affects primary unions. In this respect, the Committee recalls that the trade union situation in Djibouti has been the subject of concerns expressed by the supervisory bodies, including the Committee on Freedom of Association, since many years. ***Noting that the Conference Committee calls upon the ILO supervisory bodies to take all necessary measures to provide, with the cooperation of the Government, before the next session of the Conference, a reliable, comprehensive and up-to-date assessment of the situation of trade union movements and freedom of association in Djibouti, the Committee expects that the Government will ensure the development of free and independent trade unions in conformity with the Convention and that it will take all necessary measures to allow for an evaluation of the trade union situation in Djibouti, with the technical assistance of the Office if it so desires.***

*Legislative issues.* The Committee recalls that its comments have focused, for many years, on the need to take measures to amend the following legislative provisions:

- section 5 of the Act on Associations, which requires organizations to obtain authorization prior to their establishment as trade unions; and
- section 23 of Decree No. 83-099/PR/FP of 10 September 1983, which confers upon the President of the Republic broad powers to requisition public officials.

*Noting with regret that the Government confines itself to indicating that it is planning a revision of the Labour Code, the Committee expects that the Government will take the necessary measures to amend the above provisions and that it will indicate in its next report specific progress in this regard.*

## Ecuador

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1967)**

The Committee notes the joint observations of the National Federation of Education Workers (UNE) and Public Services International in Ecuador (PSI-Ecuador), received on 1 September 2017, which refer to matters examined by the Committee and also to allegations of violations of the Convention in practice, relating in particular to the refusal to register a number of trade union organizations. *The Committee requests the Government to send its comments on the aforementioned allegations.*

The Committee also notes the observations of the International Organisation of Employers (IOE), received on 1 September 2017, which refer to matters examined by the Committee in the present comment.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion held in the Conference Committee on the Application of Standards (the Conference Committee) in June 2017 on the application of the Convention by Ecuador. The Committee notes in particular that the Conference Committee asked the Government to: (i) ensure full respect for the right of public servants to establish organizations of their own choosing for the collective defence of their interests, including the protection regarding administrative dissolution or suspension; (ii) revoke the decision to dissolve the UNE and to allow the free functioning of the trade union; (iii) amend legislation to ensure that the consequences of any delay in convening trade union elections are set out in the by-laws of the organizations themselves; and (iv) initiate a process of consultation with the most representative employers' and workers' organizations to identify how the current legislative framework needs to be amended in order to bring all the relevant legislation into compliance with the text of Convention No. 87.

The Committee invited the Government to consider availing itself of ILO technical assistance in relation to the legal reform process. In this respect, the Committee welcomes that the Government has agreed with the Office on the provision of technical assistance in the context of the legislative reforms under way.

#### **Application of the Convention in the public sector**

*Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. Impossibility of establishing more than one trade union in state bodies.* In its previous comments, referring to article 326(9) of the Constitution, which provides that for all purposes relating to industrial relations in state institutions, workers shall be represented by a single organization, and to a proposed reform of the Basic Act to implement that provision of the Constitution, the Committee asked the Government to take the necessary measures immediately to ensure that both the Constitution and the legislation preserve the possibility of trade union pluralism in state institutions. In this regard, the Committee notes that the Government refers to the adoption on 19 May 2017 of the Basic Act reforming the legislation governing the public sector (Basic Reform Act). The Committee notes the Government's specific indications that: (i) the Basic Reform Act guarantees without restriction public servants' right to organize and the possibility of establishing more than one trade union in public sector institutions; (ii) the Basic Reform Act establishes the concept of the "committee of public servants" (CSP); and (iii) the purpose of introducing this concept is to guarantee certain prerogatives to the most representative organization of public servants in every public institution, without in any way restricting the possible co-existence of several trade unions in the public sector. The Committee also notes the joint observations of the PSI-Ecuador and the UNE maintaining that creating or establishing the CSP, which must comprise at least "50 per cent plus one" of public servants in a given institution, violates the provisions of the Convention.

With regard to the concept of the CSP, the Committee notes that section 11 of the Basic Reform Act adopted in May 2017 follows the guidelines of the Bill examined by the Committee in its last comment. In this respect, the Committee observes that: (i) the CSP displays all the characteristics of a workers' organization, with its membership, constitution and executive committee; (ii) the CSP has all the powers to promote and defend the collective interests of public servants recognized by law (especially the right to monitor the observance of labour law, the right to social dialogue and the right to strike); (iii) even though the Basic Reform Act recognizes in general terms and without restrictions the right of public servants to establish trade unions, the Act does not explicitly envisage or regulate alternative forms of organization to the

CSP whereby public servants could defend their collective interests and exercise the aforementioned collective rights; and (iv) in being obliged to comprise at least “50 per cent plus one” of public servants, there can only be one CSP for each public institution. The Committee observes that it can be concluded from the above that even though section 11 of the Basic Reform Act does not prohibit the possibility of establishing several trade unions at the same public institution, it does envisage and regulate the exercise of various collective rights of public servants only by the CSP, since there can only be one such body in a public institution in view of its obligation to comprise “50 per cent plus one” of the staff.

The Committee recalls that under the terms of *Article 2* of the Convention, trade union pluralism must be possible in all cases. In this regard, the Committee reminds the Government 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. 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 (see the 2012 General Survey on the fundamental Conventions, paragraph 97). ***The Committee therefore requests the Government to provide additional information on the manner in which organizations of public servants other than CSP are able to represent and defend the interests of their members vis-à-vis the authorities.***

*Articles 2, 3 and 4. Registration of associations of public servants and their officers. Prohibition of the administrative dissolution of such associations. Regulations on the operation of the unified information system for social and citizens’ organizations (Executive Decree No. 16 of 20 June 2013, as amended by Decree No. 739 of 12 August 2015).* In its previous comments, the Committee observed that Executive Decrees Nos 16 and 739 envisaged broad grounds for the administrative dissolution of social organizations and that the aforementioned Decrees applied to associations of public servants not registered at the Ministry of Labour but at their respective ministries. The Committee urged the Government to adopt the necessary reforms so that occupational associations of public servants are not subject to grounds for dissolution which prevent them from exercising in full their mandate of defending their members’ interests, and are not subject to administrative dissolution or suspension.

The Committee welcomes the Government’s indication that Executive Decrees Nos 16 and 739 have been repealed by Decree No. 193 of 24 October 2017. The Committee observes that even though the purpose of the new Decree is to reduce to a minimum any superfluous administrative requirements for social organizations and to reduce the grounds for dissolution, the Committee notes that the new Decree retains engagement in party-political activities as grounds for dissolution and that the new Decree continues to provide for administrative dissolution. ***Recalling once again that the defence of the interests of their members requires associations of public servants to be able to express their views on the Government’s economic and social policy, and that Article 4 of the Convention prohibits the administrative suspension or dissolution thereof, the Committee requests the Government to take the necessary steps to ensure that the rules referred to in Decree No. 193 do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members.***

*Administrative dissolution of the UNE.* In its previous comments, the Committee expressed its deep concern at the administrative dissolution of the UNE and urged the Government to take all necessary steps as a matter of urgency to revoke that decision so that the UNE can immediately resume its activities. The Committee notes the Government’s indication that, as part of the commitment to dialogue which is a hallmark of the new Government, contacts have been established between the Ministry of Labour and the UNE lawyer to explore alternatives to the dissolution and liquidation of the UNE. As a result of these contacts, the Government has concluded that: (i) the UNE is not a trade union since it was never registered with the Ministry of Labour; (ii) the competent authority for revoking the administrative act of dissolution and liquidation is the Ministry of Education; (iii) the UNE challenged the legality of the aforementioned administrative act in the Administrative Court of the city of Quito; consequently, in view of the separation of powers, the corresponding judicial ruling must be awaited; and (iv) the Ministry of Labour invited the UNE to initiate the administrative procedure for trade union registration with the Ministry of Labour. The Committee emphasizes once again that, beyond their formal title, associations of workers, including public or private teachers, which have the purpose of defending the occupational interests of their members are covered by the provisions of the Convention, and also that the obligation to comply with the Convention is not limited to the Ministry of Labour but extends to all authorities and institutions in the country. The Committee also recalls once again that the administrative dissolution of organizations of workers, including teachers, constitutes a serious violation of the Convention. ***Encouraged by the initiation of dialogue between the Government and the UNE and by the repeal of Decree No. 16, which constituted one of the legal bases for the dissolution of the UNE and for the revocation of the dissolution of several social organizations, the Committee expects that the Government will soon be in a position to report the revocation of the dissolution of the UNE so that this organization can immediately resume its activities to defend the occupational interests of its members.***

### ***Application of the Convention in the private sector***

*Article 2. Excessive number of workers (30) required for the establishment of workers’ associations, enterprise committees or assemblies for the organization of enterprise committees.* The Committee recalls that since the legislative reform of 1985, which increased the minimum number of members required from 15 to 30, it has been asking the

Government to reduce the minimum number of workers required by law to establish workers' associations or enterprise committees. The Committee also observes that the Committee on Freedom of Association (CFA) referred the follow-up of the legislative aspects of Case No. 3148 to it (see 381st Report, March 2017, paragraph 442). In this case, regarding the impossibility for a sectoral trade union in the banana sector to secure its registration for having members working at several enterprises, the CFA noted the Government's indication that the establishment of a trade union comprising workers from several enterprises conflicted with section 449 of the Labour Code, which provides that the officers of workers' associations of any kind must be workers of the enterprise concerned. On the basis of the above, the CFA asked the Government to take the necessary steps not only to reduce the minimum number of members required to establish an enterprise union but also to make it possible to establish primary-level unions comprising workers from several enterprises. The Committee notes the Government's indication that the purpose of setting a minimum number of members is to establish the representative status of trade unions and that the possibility of considering the recommendation of the Committee of Experts will be examined in the context of the current legal reform process. The Committee recalls once again that the requirement of a reasonable level of representativeness for concluding collective agreements must not be confused with the conditions required for the establishment of trade union organizations. The Committee also recalls that, under the terms of *Articles 2 and 3* of the Convention, workers must have the possibility, if they so wish, to establish primary-level organizations at a level higher than the enterprise. ***The Committee expects that the legal reform process under way will contribute towards the amendment of sections 443, 449, 452 and 459 of the Labour Code in such a way as to reduce the minimum number of members required to establish workers' associations and enterprise committees and also to enable the establishment of primary-level unions comprising workers from several enterprises.***

*Article 3. Compulsory time limits for convening trade union elections.* In its previous comments, taking account of observations from various trade union organizations alleging a violation of trade union autonomy, the Committee asked the Government to provide information on the application in practice of section 10(c) of Ministerial Decision No. 0130 of 2013, regulating labour organizations, which provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiry of their mandate, as set out in their respective union constitutions. The Committee notes the Government's indication that: (i) the purpose of Ministerial Decision No. 0130 is to give effect to article 326.8 of the Constitution; (ii) the trade unions are requesting that the standards of civil or company law be used which provide that officers shall remain in office until they are legally replaced; and (iii) the Ministry of Labour, in conjunction with the National Assembly, is instigating the preparation of a new Basic Code of Labour and Employment Promotion which will include a legislative proposal relating to this matter. ***The Committee expects that the new legislation to be adopted will provide that, subject to the observance of democratic rules, the consequences of any delay in holding elections shall be determined by the union constitutions themselves.***

*Election as officers of enterprise committees of workers who are not trade union members.* In its previous comment, the Committee considered that the imposition by law that workers who are not union members may stand for election as officers of the enterprise committee is contrary to the trade union autonomy recognized by *Article 3* of the Convention, and it asked the Government to take the necessary measures to amend section 459(3) of the Labour Code. The Committee notes the Government's indication that the purpose of the legislation in force is to ensure the democratic election of the officers of the enterprise committee but that the point raised by the Committee will be examined in the context of the current legal reform process. ***Observing that the new Basic Reform Act provides that only members of the "committee of public servants" may become its officers, the Committee expects that the Government will take the necessary steps to amend section 459(3) of the Labour Code in such a way that workers who are not enterprise committee members may only stand for office if the enterprise committee's own constitution envisages that possibility.***

*Article 3. Right of workers' organizations and associations of public servants to organize their activities and to formulate their programmes. Prison sentences for the stoppage or obstruction of public services.* In its previous comments, the Committee urged the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code (COIP), which provides for imprisonment of one to three years for any person who obstructs or stops the normal provision of a public service, so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike. In this regard, the Committee notes the Government's indication that: (i) the criminal law definition established by section 346 of the COIP is indeed not limited to acts of violence but covers all acts that have the effect of obstructing or stopping the normal provision of a public service, thereby protecting the general interest; (ii) however, it is not the purpose of the aforementioned provision of the COIP to penalize the legitimate exercise of the right to strike; and (iii) the national legislation establishes requirements for calling a strike in the public sector, with a prohibition on the deprivation of fundamental services, including health care, education and energy.

The Committee reiterates that, even though certain restrictions on the right to strike are acceptable to protect the basic interests of the community, criminal penalties should be envisaged only where, during a strike, violence against persons or property, or other serious infringements of criminal law have been committed (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property) (see the 2012 General Survey on the fundamental Conventions, paragraph 158). In this regard, the Committee also emphasizes that a broad criminal law definition imposing imprisonment for any obstruction of the normal provision of a public service, combined with uncertainty over the legality of a strike, may have an excessively deterrent effect on the legitimate exercise of

collective rights. *In the light of the above, the Committee urges the Government once again to take the necessary steps to amend section 346 of the COIP as indicated, and to provide information on all progress made in this respect.*

*Recalling that the Government has agreed with the Office on the provision of technical assistance, the Committee expects that the Government will very soon be in a position to report the adoption of legislative provisions that take account of the comments that the Committee has been making for a number of years regarding both the public and private sectors.*

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

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

The Committee notes the joint observations of the National Federation of Education Workers (UNE) and of Public Services International in Ecuador (PSI-Ecuador), received on 1 September 2017, which refer, among other things, to the adoption on 19 May 2017 of the Basic Act reforming public sector legislation (Basic Reform Act) and also to allegations of anti-union discrimination. *The Committee requests the Government to send its comments on the aforementioned allegations of anti-union discrimination and also on those contained in the 2016 observations of the UNE and PSI-Ecuador. The Committee also urges the Government to send its comments on the specific allegations of anti-union dismissals at an enterprise in the banana industry contained in the 2014 observations of the International Trade Union Confederation (ITUC).*

The Committee welcomes that the Government has agreed with the Office on the provision of technical assistance in the context of the legislative reforms under way.

#### **Application of the Convention in the public sector**

*Articles 1, 2 and 6 of the Convention. Protection of public sector workers who are not engaged in the administration of the State against acts of anti-union discrimination and interference.* In its previous comments, the Committee urged the Government to take the necessary measures to ensure that the legislation applicable to the public sector contains provisions, at least for workers not covered by the exception in *Article 6* of the Convention, prohibiting and establishing dissuasive penalties for any acts of anti-union discrimination and interference, as set out in *Articles 1* and *2* of the Convention, and also urged the Government to take the necessary measures to ensure that the use of the “compulsory purchase of redundancy” procedure does not give rise to acts of anti-union discrimination. In this respect, the Committee notes with *interest* that the Basic Reform Act contains provisions which: (i) protect public servants against any act of discrimination related to the exercise of their right to organize (section 11); (ii) protect the independence of organizations of public servants and prohibit interference by the public authorities in the establishment of such organizations (section 11); and (iii) provide that any termination of employment or “compulsory purchase of redundancy” with compensation for public servants who are members of the board of the Civil Service Committee shall be null and void (general provisions). *Recalling the importance of having effective and dissuasive penalties in this respect, the Committee requests the Government to provide information on the penalties and compensation applicable to acts of discrimination and anti-union interference committed in the public sector, indicating the legislative or regulatory provisions that establish them. The Committee also requests the Government to indicate whether, in addition to the Civil Service Committee members, the leaders of organizations of public servants also have extra protection against the termination of employment or benefit from other similar measures.*

*Articles 4 and 6. Collective bargaining for public sector workers who are not engaged in the administration of the State.* In its previous comments, the Committee observed with deep concern that, in violation of *Articles 4* and *6* of the Convention, and despite its reiterated comments and those of other ILO supervisory bodies, the constitutional amendments adopted in December 2015 exclude the public sector as a whole from the scope of collective bargaining. The Committee urged the Government to reopen in the near future an in-depth debate with the trade unions concerned with a view to re-establishing collective bargaining for all categories of workers in the public sector covered by the Convention. The Committee also urged the Government to respect fully the right of workers in the public sector recruited prior to the entry into force of the constitutional amendments to continue negotiating their terms and conditions of employment.

The Committee notes the Government’s indication that: (i) in Ecuador the concept of public servants not engaged in the administration of the State does not exist; (ii) collective bargaining has not disappeared from the public sector since public sector workers hired before the entry into force of the constitutional amendments of 2015 continue to enjoy this right; and (iii) the possibility of taking account of the Committee’s observations in the legislative reforms under way will be examined. The Committee also notes that PSI-Ecuador and the UNE maintain that the Basic Reform Act adopted on 19 May 2017 has missed the opportunity to reintroduce the right to collective bargaining in the public sector since it only recognizes the possibility for dialogue between the Civil Service Committee and the public institutions with respect to a limited number of matters which do not include remuneration.

The Committee observes that, on the basis of the final part of section 326.16 of the Constitution as amended in December 2015, which provides that collective bargaining will only apply to the private sector since the State and the public administration are obliged to take care of the public interest, the Basic Reform Act does not recognize the right to collective bargaining of public servants but establishes, through section 11, a mechanism for social dialogue between the

Civil Service Committee and the public institutions. The Committee also observes that section 11 provides that: (i) it is for the Civil Service Committee to take the initiative with regard to the social dialogue process; (ii) social dialogue may cover the following subjects: training and technical instruction; improvements to conditions of work and the working environment; occupational safety and health and the integration of vulnerable groups into the labour market; (iii) the results of the social dialogue will be recorded in a report to be sent to the Ministry of Labour; and (iv) any disputes arising from failure to implement the results of the social dialogue will be submitted to compulsory mediation and, if no solution is reached by this means, the disputes will be referred to the conciliation and arbitration tribunal.

The Committee notes that even though the social dialogue mechanism established by the Basic Reform Act lays down dispute settlement procedures, it does not provide for the conclusion of agreements whereby public sector employees can endorse their conditions of employment. The Committee also notes that the subjects for dialogue are limited and do not include, in particular, questions of remuneration. In this regard, the Committee recalls that, under the terms of *Articles 4 and 6* of the Convention, all workers in the public sector who are not engaged in the administration of the State (such as employees in public enterprises, municipal employees and those in decentralized institutions, teachers in the public sector and personnel in the transport sector) are covered by the Convention (see the 2012 General Survey on fundamental Conventions, paragraph 172) and therefore, must be able to engage in collective bargaining concerning their conditions of employment, including pay conditions, and that mere consultation of the unions concerned is not sufficient to meet the requirements of the Convention in this respect (see General Survey, op. cit., paragraph 219). ***Recalling that the particular characteristics of the public administration may make a degree of flexibility necessary and that the Convention may therefore be compatible with systems that require parliamentary approval of certain conditions of work or financial clauses of collective agreements in the public sector, and observing that in many countries mechanisms are in operation which allow the harmonious coexistence of the public sector's mission of general interest with the responsible exercise of collective bargaining, the Committee urges the Government once again to reopen an in-depth debate with the trade unions concerned with a view to establishing an adequate collective bargaining mechanism for all categories of workers in the public sector covered by the Convention. The Committee reminds the Government that it may seek support from the Office in the context of the current technical assistance provided. The Committee also requests the Government to provide information on collective agreements signed with public sector workers recruited prior to the entry into force of the constitutional amendments of 2015.***

#### **Application of the Convention in the private sector**

***Article 1. Adequate protection against acts of anti-union discrimination.*** In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the legislation includes a specific provision guaranteeing protection against acts of anti-union discrimination in access to employment. The Committee notes that the Government concurs once again that the current legislation does not contain specific provisions prohibiting anti-union discrimination in recruitment and there is a need to engage in reflection so as to be able to combat effectively any discrimination in employment. ***In the light of the above and encouraged by the legislative reform process under way with technical assistance from the Office, the Committee trusts that the Government will very soon be in a position to report that a specific provision has been introduced into the legislation guaranteeing protection against acts of anti-union discrimination in access to employment.***

***Article 4. Promotion of collective bargaining.*** In its previous comments, the Committee pointed out the need to amend section 221 of the Labour Code with respect to the submission of the draft collective agreement so that, where there is no organization with over 50 per cent of the workers as members, minority trade unions may, either alone or jointly, negotiate on behalf of their members. The Committee notes the Government's indication that it will forward these observations to the authorities responsible for implementing the legislative reforms in progress but that it should also be recalled that the purpose of the existing legislation is to ensure the representativeness of trade unions vis-à-vis employers with a view to concluding majority agreements. The Committee recalls that, 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 (see General Survey, op. cit., paragraph 226). ***In light of the above, the Committee once again requests the Government, in consultation with the social partners, to take the necessary steps to amend section 221 of the Labour Code so that, where there is no organization with over 50 per cent of the workers as members, minority trade unions may, either alone or jointly, negotiate on behalf of their members. The Committee also requests the Government once again to provide information on the number of collective agreements concluded in recent years and the number of sectors and workers covered.***

***Noting that the Government has agreed with the Office on the provision of technical assistance, the Committee trusts that the Government will very soon be in a position to report the adoption of legislative provisions that take account of the comments that the Committee has been making for a number of years regarding both the public and private sectors.***

***[The Government is asked to reply in full to the present comments in 2018.]***

## Egypt

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

The Committee takes note of the observations made by the International Trade Union Confederation (ITUC) received on 1 September 2017 in relation to the application of the Convention in law and in practice. The Committee also notes the Government's detailed reply to these observations as well as to the 2016 ITUC observations.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2017 concerning the application of the Convention. The Committee observes that the Conference Committee called upon the Government to: (1) ensure that the draft Law on trade union organizations, presently before the House of Representatives (*Majlis Al-Nouwab*) for adoption, is in conformity with the Convention, in particular with respect to the concerns relating to the institutionalization of a single trade union system; (2) transmit a copy of this draft legislation to the Committee of Experts; and (3) ensure that all trade unions in Egypt are able to exercise their activities and elect their officers in full freedom, in law and in practice, in accordance with the Convention. The Committee called on the Government to accept an ILO direct contacts mission to assess the progress in respect of the abovementioned conclusions and requested that this information, as well as a detailed report from the Government, be transmitted to the Committee of Experts for examination before its November 2017 session.

The Committee welcomes the information that the direct contacts mission (DCM) was able to visit the country from 11 to 14 November 2017 and takes note of the mission report. The Committee also notes the draft Law on trade union organizations transmitted by the Government as the version submitted to the *Majlis Al-Nouwab* in May 2017, as well as the additional changes made by the Parliament in October, all of which were the subject of consideration by the direct contacts mission.

*Trade union monopoly and the development of a legislative framework for freedom of association – Trade Union Act.* The Committee recalls that it has been raising concerns about the non-conformity of Trade Union Act No. 35 of 1976 for several decades and that consideration by the Conference Committee on the Application of Standards of the application of this Convention in Egypt goes back to 2008 when it urged the Government to take tangible steps in the very near future to ensure that all workers were ensured the full enjoyment of their fundamental right to freely organize and, in particular, to guarantee the independence of trade union organizations and the elimination of all forms of interference in workers' organizations.

In this regard, the Committee noted in its previous comments the Government's indication that the final draft Law on trade union organizations and protection of the right to organize was being discussed by the Council of Ministers and was expected to be finalized soon. The Committee expressed its expectation that the new Law would address its long-standing comments concerning the Trade Union Act with regard to: the institutionalization of a single trade union system; the control granted by law to higher-level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions; the control exercised by the Confederation of Trade Unions over the financial management of trade unions; the prohibition from joining more than one workers' organization; the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services; and the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action.

*Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing.* The Committee notes the Government's indication in its latest report that the philosophy of the new draft Law is based on the consolidation of the principle of free establishment of trade union organizations and federations, as well as the guarantee of their democracy and stability. In this respect, the Government confirms that the new draft Law provides for the possibility of establishing more than one trade union federation and a pluralism of general trade unions, while additionally eliminating the control previously granted under the 1976 Trade Union Act to the higher-level Confederation of Trade Unions. The Committee notes, however, the concerns raised by the ITUC and further reflected by a number of stakeholders to the direct contacts mission that the provision granting continuing legal personality only to trade union organizations recognized by law at the time of its enforcement would seriously disadvantage those unions that had been registered pursuant to the 2011 Ministerial Declaration on Freedom of Association as they are not considered as being recognized by law. The Committee notes the information provided by the Government that it is not possible to grant legal personality to those unions that had been registered under the Ministerial Declaration as such status can only be granted through law and not a declaration. The Government adds that the draft was amended to allow all trade unions without exception to reconcile their situation within two months of the issuance of the implementing regulation.

The Committee emphasizes that, in the context of a long-entrenched system of legislatively imposed trade union monopoly, it is critical that all trade unions be given an equal chance to be registered under the new trade union law, once adopted. This would not be possible in a system where legal personality is maintained only for those registered under the 1976 Act unless the unions registered under the Ministerial Declaration on Freedom of Association are also able to

maintain their membership and continue their activities during the period stipulated for the reconciliation of their status. The Committee further expresses its **deep concern** at the indication in the ITUC's observations, also raised in discussions with the DCM, that the State Advisory Council issued a statement on 21 December 2016 stipulating that the Ministry of Manpower and Immigration shall not accept applications for registration from independent trade union organizations and that, as a result, there has been severe obstruction and interference with the internal trade union affairs of the organizations registered under the Ministerial Declaration. **Emphasizing the conclusions of the Committee on the Application of Standards requesting the Government to ensure that all trade unions in Egypt are able to exercise their activities and elect their officers in full freedom, in law and in practice, the Committee urges the Government to ensure that all trade unions existing at the time of the adoption of the Law on trade union organizations are able to function freely and carry out their activities without interference, pending their regularization under the Law. In this regard, the Committee further urges the Government to ensure that workers wishing to change their trade union membership may do so without detriment to their acquired rights relating to contributory provident funds, which otherwise might hinder the workers' freedom to choose the organization with which they wish to affiliate.**

**Minimum membership requirements.** The Committee further notes the concerns raised by the ITUC in its observations and by various stakeholders to the mission that the minimum membership requirements for establishing a trade union at the various levels (enterprise, sectoral and national) were excessive and likely to hinder the right of workers to establish the organization of their own choosing and prevent the establishment of independent trade unions in practice. The Committee notes with **regret** the indications provided by the Government that the number of workers required to establish a trade union committee at the enterprise level had been increased during the parliamentary debate from 50 to 250. The Government adds that minimum membership requirements are necessary for the good organization of trade union work and to ensure the power of trade union organizations and preserve against fragmentation. The Committee must nevertheless recall that, while it has found that the establishment of a minimum membership requirement in itself is not incompatible with the Convention, it has always been of the view that 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 (see the 2012 General Survey on the fundamental Conventions, paragraph 89 and related footnotes). In this regard, the Committee notes the uncontested information provided by various stakeholders to the direct contacts mission that well over 90 per cent of the Egyptian economy was situated in micro- and small enterprises with fewer than 50 workers. Additionally, the Committee notes that the draft Law requires a minimum of 15 enterprise unions and 20,000 workers to establish a general (sectoral) trade union and ten general trade unions and 200,000 workers to establish a trade union federation. **The Committee notes from the mission report that detailed discussions were held in relation to the minimum membership requirement and urges the Government, following full consultations with all the social partners concerned, to take the necessary measures to ensure that the level of minimum membership requirements set out in the Law once adopted are not set at such a level as to perpetuate the previously imposed trade union monopoly and thus ensure the right of all workers to form and join the organization of their own choosing.**

**Finally, the Committee recalls its previous comments that the ban on workers joining more than one trade union should not apply in cases where the worker holds more than one job in different workplaces and once again requests the Government to take the necessary measures in this regard.**

**Articles 3 and 5. Right of workers' organizations to organize their administration without interference and to enjoy the benefits of international affiliation.** The Committee notes the concerns raised by the ITUC in its observations and by several stakeholders to the mission in relation to the ban on receipt of aid grants from foreign organizations in the draft trade union organizations law. The Committee recalls in this regard that it has considered that subjecting the receipt of funds from abroad to the approval of the public authorities to be incompatible with the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 110). While taking due note of the circumstances in the country and the national security concerns described by the Government and stressed by various stakeholders to the direct contacts mission, the Committee considers that an outright prohibition of the receipt of funds from a foreign entity is an excessive measure for addressing these concerns and the specific targeting of trade unions in this regard, as opposed to subjecting such receipt to general approval provisions covering all aspects of society, is difficult to understand. **The Committee requests the Government to modify this prohibition prior to the adoption of the law so as to ensure that it clearly enables trade unions to benefit from the technical assistance and support that may be provided by foreign entities for the exercise of their legitimate trade union activities.**

Finally, the Committee notes a number of other issues raised by the ITUC in its observations concerning the detailed regulation of trade union activities, constitutions and eligibility for union office. **The Committee firmly expects the Government to ensure that the law once adopted will not be implemented in a manner which would infringe on the right of workers' organizations to carry out their activities, draw up their constitutions and rules and elect their officers freely, and requests the Government to provide detailed information in its next report on the application of the law.**

The Committee takes note of the communication from the Government received on 7 December 2017 providing its observations on the DCM report and indicating that the Parliament had adopted the draft law. The Committee notes with **regret** that the only apparent change to the draft was to lower the minimum membership requirement for forming a trade union at enterprise level to 150 workers, a requirement that the Committee still considers to be well beyond a reasonable

level that would ensure the rights of workers to form and join the organization of their own choosing. Additionally, the Committee notes with *regret* the section at the end of the law penalizing various contraventions with imprisonment. The Committee further notes the Government's indication that the implementing Executive Regulations will clarify the rights related to the other points raised above. ***The Committee urges the Government to ensure that all workers are able to exercise freely the rights under the Convention in accordance with the above comments and requests it to provide detailed information in this regard in its next report, including a copy of the law on trade union organizations and of the Executive Regulations and to indicate any steps taken or contemplated to revise the law on trade union organizations.***

*Labour Code.* As regards the comments it has been making for several years on Labour Code No. 12 of 2003, the Committee notes the Government's indication that the State Council finished its examination of the draft Labour Code on 30 January 2017 and that it was referred to the *Majlis Al-Nouwab*. The Parliamentary Manpower Committee has held a few dialogue sessions with the majority of trade union federations, current and independent trade unions, in accordance with the Government's plan of action. The Government adds that the draft Law was expected to be submitted to the Parliament plenary in October for promulgation.

The Committee notes that the latest draft of the Labour Code shared by the Government in 2017 addresses a variety of issues raised under this and other Conventions but observes that the following comments in relation to the 2003 Labour Code still remain unaddressed: the legal obligation for workers' organizations to specify in advance the duration of a strike, an infringement of which is considered to be serious misconduct liable to dismissal (sections 201 and 121(8) of the draft); the ability to have recourse to compulsory arbitration at the request of only one of the parties (sections 186 and 198); and the prohibition of industrial action in vital or strategic enterprises where stoppage of work would compromise national security or basic services provided for citizens to be designated in a decree by the Prime Minister (section 203).

***The Committee urges the Government to ensure that the new Labour Code is adopted in the near future and that it will take fully into account the above comments. It requests the Government to provide information in its next report on the progress made in this regard and to supply a copy of the Labour Code once adopted.***

The Committee further notes with respect to its previous comments on the exclusion of certain categories of workers from the draft Labour Code that the Government has announced that it would prepare a new draft Law regulating domestic work and protecting domestic workers' rights while government officials are covered by the new Civil Service Law No. 81 of 2016. ***The Committee requests the Government to provide a copy of the Law regulating domestic work once it is adopted and will examine the impact of the Civil Service Law of 2016 on the rights of public servants under this Convention once a translation is available.***

*[The Government is asked to reply in full to the present comments in 2018.]*

## El Salvador

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 2006)***

The Committee notes the Government's comments in response to the observations of the International Trade Union Confederation (ITUC) received in 2014 and 2016. In relation to the allegations of anti-union discrimination against staff of the municipal authorities, the Committee notes the Government's statement that no investigations are conducted by the Ministry of Labour and Social Security, since the Labour Code does not apply to this category of public servants. The Government also states that the national jurisprudence has established that the Ministry of Labour should refrain from carrying out inspections into violations of labour rights among the municipal authorities as they do not have the competence in this regard. Lastly, the Government indicates that it has planned to meet with the municipal authorities to inform them of the complaints before the ILO and to initiate a dialogue process with a view to protecting the rights of affiliated workers. While noting the actions envisaged by the Government, the Committee highlights that the fact that the staff of the municipal authorities is not covered by the Labour Code does not free the Government of its responsibility to guarantee this category of workers adequate protection against anti-union discrimination. ***Recalling its previous comments in the framework of the application of this Convention and the Labour Relations (Public Service) Convention, 1978 (No. 151) on the need to reform the Civil Service Act to ensure that all public employees covered by these Conventions enjoy adequate protection against anti-union discrimination, the Committee requests the Government to take, in the near future, all necessary measures to ensure that, first, investigations are conducted by the competent authorities into the allegations of anti-union discrimination reported by the ITUC and, where necessary, effective penalties are imposed and, second, the legal framework is revised as indicated. The Committee requests the Government to provide information in this regard. It requests the Government to send its comments on the allegations of anti-union discrimination in the aviation civil service and in an enterprise of the bakery sector.***

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* The Committee notes the Government's indication that the bill on the new system of fines has not been adopted. ***Recalling the importance of the fines imposed in the event of anti-union discrimination being of a dissuasive nature, the Committee requests the***

**Government to take effective measures to establish a dissuasive penalty system and expects that it will soon be able to adopt the reforms envisaged in this regard.**

*Articles 2, 4 and 6. Legislative issues pending for several years.* The Committee recalls that for several years it has been making comments on certain provisions of domestic law with the aim of bringing those into conformity with *Articles 2, 4 and 6* of the Convention:

- *acts of interference*: section 205 of the Labour Code and section 247 of the Penal Code so that the legislation explicitly prohibits all acts of interference under the terms prescribed by *Article 2* of the Convention;
- *requirements to be able to negotiate a collective agreement*: sections 270 and 271 of the Labour Code and sections 106 and 123 of the Civil Service Act so that, when no union covers more than 50 per cent of the workers, the right to collective bargaining is explicitly granted to all unions, at least on behalf of their own members;
- *revision of collective agreements*: section 276(3) of the Labour Code to ensure that the renegotiation of collective agreements while they are still in force is only possible at the request of both parties concerned;
- *judicial remedies in the event of the denial of the registration of a collective agreement*: section 279 of the Labour Code to specify that judicial remedies are applicable against decisions of the Director-General not to register a collective agreement;
- *approval of collective agreements concluded with a public institution*: section 287 of the Labour Code and section 119 of the Civil Service Act, which regulate collective agreements concluded with a public institution, to replace the requirement for prior ministerial approval by a provision envisaging the participation of the financial authorities during the process of collective bargaining, and not when the collective agreement has already been concluded;
- *exclusion of certain public employees*: section 4(1) of the Civil Service Act so that all public officials who are not engaged in the administration of the State enjoy the guarantees provided for in the Convention.

The Committee notes firstly that the Government refers to the adoption of legislative Decree No. 10 of 2009 which sets forth that all those employees who entered the public administration before 31 January 2009 will receive permanent contracts. **The Committee requests the Government to provide further details on the effects of the adoption of the above legislative Decree on the application of the Convention.** The Committee notes secondly the Government's indication that, following an analysis of the labour reforms prepared within the framework of the strategic plan of the Ministry of Labour and Social Security 2014–19, a ministerial commission has been established for the presentation of the reforms to the Legislative Assembly. **The Committee hopes that the Government, following consultation with the most representative workers' and employers' organizations, will present to the Legislative Assembly, in the near future, the bills on the reforms of the legislative provisions contained in the Labour Code, the Penal Code and the Civil Service Act which have been the subject of its comments for several years. The Committee requests the Government to provide information on any progress in this regard and emphasizes that it could consider the possibility of including these issues in the framework of the technical assistance it had requested as a follow-up to the direct contacts mission regarding the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).**

*Application of the Convention in practice.* The Committee notes the Government's information that no collective labour agreements have been concluded with teachers in the public sector and that between 2009 and March 2016, the Ministry of Labour and Social Security registered 43 collective labour agreements, 39 of which are from the private sector and four from the public sector. The Committee notes with **concern** that the number of collective agreements referred to is very low, particularly when taking into account that, in practice, collective bargaining is carried out in the country at enterprise level. **The Committee requests the Government to take measures to promote collective bargaining in all sectors covered by the Convention, including in public education, and to provide information in this respect indicating any proposed collective bargaining agreement in the public education not concluded and the reasons for such results. The Committee also requests the Government to continue providing information on the number of collective agreements signed, the sectors concerned and the numbers of workers covered by those.**

## Equatorial Guinea

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

The Committee notes with **deep concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2012. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee again recalls that it has been asking the Government for a number of years to: (i) amend section 5 of Act No. 12/1992, which provides that employees' organizations may be occupational or sectoral – so that workers may, if they so desire, establish enterprise trade unions; (ii) amend section 10 of Act No. 12/1992, which provides that for an occupational association to obtain legal personality it must, inter alia, have a minimum of 50 employees – so as to reduce the number of workers required to a reasonable level; (iii) confirm that, as a result of a revision of the Fundamental Act in 1995 (Act No. 1 of 1995), the right to strike is recognized in public utilities and is exercised under the conditions laid down by law; (iv) provide

information on the services deemed to be essential, and on how the minimum services to be ensured are determined, as provided for in section 37 of Act No. 12/1992; and (v) state whether public servants who do not exercise authority in the name of the State enjoy the right to strike (section 58 of the Fundamental Act).

***The Committee again urges the Government to take the necessary steps to amend the legislation in order to bring it into full conformity with the provisions of the Convention and to send information in its next report on any measures taken or contemplated in this respect. The Committee expresses the strong hope that the Government will take all possible steps without delay to resume a constructive dialogue with the ILO.***

Furthermore, the Committee had noted the comments of the International Trade Union Confederation (ITUC) on the application of the Convention and the persistent refusal to register various trade unions, namely the Trade Union of Workers of Equatorial Guinea (UST), the Independent Services Union (SIS), the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC). The Committee recalls once again that the discretionary power of the competent authority to grant or reject a registration request is tantamount to the requirement for previous authorization, which is not compatible with *Article 2 of the Convention* (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 74). ***Under these conditions, the Committee once again urges the Government to register without delay those trade unions which have fulfilled the legal requirements and to provide information in this respect in its next report.***

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

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2001)**

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

***Article 4 of the Convention. Collective bargaining.*** The Committee noted the previous comments by the International Trade Union Confederation (ITUC), on the repeated refusal to recognize a number of trade unions, namely the Workers' Union of Equatorial Guinea (UST), the Independent Service Union (SIS), the Teachers' Trade Union Association (ASD) and the Rural Workers' Organization (OTC), and the lack of a legal framework for the development of collective bargaining. The Committee again stresses that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention. ***The Committee urges the Government once again to adopt the necessary measures without delay to create appropriate conditions for the establishment of trade unions that are able to engage in collective bargaining with a view to regulating conditions of employment.***

***Article 6. Right of public servants not engaged in the administration of the State to engage in collective bargaining.*** The Committee notes that, according to ITUC's comments, the right of workers in the public administration to establish trade unions has still not been recognized in law, despite the fact that section 6 of the Act on trade unions and collective labour relations, No. 12/1992, provides that the right to organize of employees in the public administration shall be regulated by a special law. The Committee notes that the ITUC also indicates that the legal framework for collective bargaining is deficient and ambiguous. ***The Committee urges the Government to indicate whether a special law has been adopted and whether it establishes the right to organize and to collective bargaining of workers in the public administration, and asks it to send detailed information on the application of the Convention to public servants not engaged in the administration of the State. The Committee reminds the Government that it may seek technical assistance on this matter from the Office, and expresses the firm hope that it will take without delay all measures within its reach to resume constructive dialogue with the ILO.***

***Application of the Convention in practice.*** ***The Committee asks the Government to send statistics of the number of employers' and workers' organizations, the number of collective agreements concluded with these organizations and the number of workers and the sectors covered.***

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

## **Eritrea**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2000)**

The Committee notes with ***regret*** that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2014. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the Government's comments on the observations submitted by the International Trade Union Confederation (ITUC) in 2012, which relate to the right to elect trade union representatives in full freedom. As to the ITUC allegations that all unions, including the National Confederation of Eritrean Workers and its affiliates, are kept under close scrutiny by the Government, and that public gatherings of over seven persons are prohibited, the Committee recalls that the rights of trade unions to organize their administration and activities and to hold public meetings and demonstrations are essential aspects of freedom of association. ***The Committee requests the Government to provide further information as to how it ensures the respect of these rights in practice.***

***Article 2 of the Convention. Right of workers without distinction whatsoever, to establish and join organizations.*** In its previous comments, the Committee hoped that the Civil Servants' Proclamation would be adopted shortly so that all civil servants have the right to organize, in accordance with the Convention. The Government once again states that the drafting process of the Proclamation is at the final stage for approval, and that civil servants will have the right to organize under its section 58(1). ***Observing with concern that the Government has been referring to the imminent adoption of the Civil Servants' Proclamation for the last 12 years, the Committee urges the Government to take all necessary measures to expedite the adoption process of the Proclamation so as to grant without further delay the right to organize to all civil servants, in conformity with the***

*Convention. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard, if it so wishes.*

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

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

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2000)**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2014. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference.* The Committee had hoped that the Government would take the necessary measures without delay to amend the 2001 Labour Proclamation to strengthen the protection against anti-union discrimination. In its last report, the Government again indicates that the Ministry of Labour and Human Welfare has currently engaged in a drafting process to amend section 23 of the Labour Proclamation with a view to broadening the protection by covering all acts of anti-union discrimination and by protecting workers against dismissal linked to trade union membership or activity, the best solution being considered to be reinstatement. *The Committee requests the Government to expedite the process in order to guarantee in the very near future the protection against anti-union discrimination of both trade union officials and members (it being understood that reinstatement remains the best redress) through adequate compensation both in financial and occupational terms and its extension to recruitment and any other prejudicial acts during the course of employment including dismissal, transfer, relocation or demotion.*

*Applicable sanctions in cases of anti-union discrimination or acts of interference.* The Committee had previously recalled that the fine of 1,200 Eritrean nakfa (ERN) (approximately US\$80), established in section 156 of the Labour Proclamation as a penalty for anti-union discrimination or acts of interference, is not severe enough and requested the Government to provide information on any progress made in amending that provision. The Government reiterates that sections 703 and 721 of the Transitional Penal Code would prevail in the event of repeated violations of the right to organize established in the national legislation, though to date no sentences have been handed down for such violations, and that it is currently involved in the drafting process to amend section 156 of the Labour Proclamation. *The Committee requests the Government to take necessary measures without delay to provide for sufficiently dissuasive sanctions for anti-union dismissals and other acts of anti-union discrimination as well as acts of interference.*

*Articles 1, 2, 4 and 6. Domestic workers.* In its previous comments, the Committee had hoped that the new regulation on domestic work would explicitly grant the rights set out in the Convention to domestic workers. The Government again states that domestic workers are not expressly exempted from the definition of "employee" in section 3 of the Labour Proclamation and thus are not prohibited from the right to organize and to collective bargaining; but that the Government will take measures to include the rights guaranteed in the Convention in the forthcoming regulation applicable to domestic employees. *Recalling that under section 40 of the Labour Proclamation the Minister may by regulation determine the provisions of the Proclamation applicable to domestic employees, the Committee expresses the firm hope that the guarantees enshrined in the Convention will soon be explicitly afforded to domestic workers either by way of a regulation issued under section 40 or by way of the new regulation on domestic employees announced by the Government.*

*Article 6. Public sector.* The Committee had hoped that the new Civil Service Proclamation would explicitly recognize the rights laid down in the Convention for civil servants in the Central Personnel Administration (CPA) who are not engaged in the administration of the State. The Government again indicates that public servants are split into two categories, those who work in the CPA and those who work in public or semi-public enterprises; that the latter are covered by the Labour Proclamation and have therefore, like other workers, the rights to organize and to bargain collectively. The Government also states that, as regards CPA workers, the draft Civil Service Proclamation has not yet been enacted, and that up to now no collective bargaining has been undertaken between the Government and civil servants. *The Committee requests the Government to provide specific information on the status of the draft Civil Service Proclamation and to transmit a copy of the draft. It expresses the firm hope that more than 10 years after ratification of the Convention the Government will soon be in a position to report the adoption of the above Proclamation thus ensuring that civil servants not engaged in the administration of the State benefit from the rights enshrined in the Convention, particularly the right to collective bargaining.*

*Articles 4 and 6. Collective bargaining in practice.* The Committee notes the Government's comments in reply to the 2012 observations of the International Trade Union Confederation (ITUC). *It once again requests the Government to indicate any measures taken or contemplated to promote the development of collective bargaining in the private and public sectors.*

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

## **Gabon**

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

In its previous comments, further to the observations of the International Trade Union Confederation (ITUC) relating to restrictions on the right to strike in the public sector on the repeatedly invoked grounds of ensuring public safety, the Committee asked the Government to provide information on the number of strikes called in the public sector as a whole, the individual sectors concerned and the number of strikes prohibited on the grounds of a possible disruption of public order. The Committee notes the Government's indication that trade unions within a number of government departments, including customs, taxation, higher education, national education, health and social affairs, have availed themselves of their right to strike. Moreover, the Government indicates that the National Congress of Education Sector Unions (CONASYSED) held its latest strike at the Martine Oulabou Public School without being removed from the premises and

without the right to strike being prohibited. *While taking note of the information provided by the Government on examples of strikes called in the public sector, the Committee requests once again that the Government provide detailed information on the number of strikes that have been called in the public sector, and the number of strikes prohibited on the grounds of a possible disruption of public order.*

Moreover, further to the observations previously received from Education International (EI), denouncing the adoption of various regulations which are making the exercise of union activities in the education sector increasingly difficult, the Committee asked the Government to indicate the measures taken in the education sector to ensure that trade unions have access to educational establishments so that they can perform their representative functions and defend their members' interests. The Committee notes with *regret* that there has been no reply from the Government on this matter. *The Committee reiterates its request and expects that the Government will take all necessary steps to provide the requested information.*

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

## Gambia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2000)**

The Committee notes with *concern* that the Government's report has not been received. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017, which contain allegations of arrests of several leaders of the Gambian National Transport Control Association (GNTCA), the death of Mr Sheriff Diba, one of the arrested leaders, while in detention, and the ban imposed on the activities of the GNTCA. *The Committee expresses concern at the gravity of these allegations and requests the Government to provide its comments thereon.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2000)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2011. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Scope of the Convention. Civil servants, prison officers and domestic workers.* In its previous comments, the Committee had requested the Government to guarantee that the rights afforded by the Convention were ensured for prison officers, domestic workers and civil servants not engaged in the administration of the State. The Committee noted with regret that the new Labour Act did not apply to the abovementioned categories of workers (section 3(2)). The Committee recalled that only the armed forces, the police and public servants engaged in the administration of the State can be excluded from the guarantees of the Convention. The Committee notes that the Government had indicated that the right to collective bargaining under Part XIII of the Labour Act is a communal right guaranteed to all workers. The Committee observes that although prison officers, domestic workers and civil servant are excluded from the application of the Labour Act, section 3(3) entitles the Secretary of State to extend the Act's application by an order published in the gazette, to any excluded category of workers. *The Committee therefore requests the Government to indicate if the excluded employees under section 3(2) of the Labour Act are afforded the rights to collective bargaining under Part XIII of the Labour Act as a result of an order published in the gazette by the Secretary of State and if so, to provide a copy of the said Order. The Committee also requests the Government to indicate how these categories of workers are afforded adequate protection against acts of anti-union discrimination and interference, in accordance with Articles 1 and 2 of the Convention.*

*Article 4. Measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or their organizations and workers' organizations.* In its previous comments, the Committee had noted that according to section 130 of the Act, in order to be recognized as a sole bargaining agent, a trade union should represent a certain percentage of employees under a contract of service (30 per cent in the case of a single union and at least 45 per cent if the establishment in question employs at least 100 people; in this case, the bargaining agent could be composed of two or more trade unions). The Committee recalled that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should not be denied to other unions in the unit, at least on behalf of their own members. The Committee further noted that section 131 of the Act provides that an employer may, if he or she wishes, organize a secret ballot to establish a sole bargaining agent. The Committee recalled that the organization of a ballot for determining representativeness should be carried out by the authorities or an independent party upon a request presented by a union. The Committee requested the Government to take the necessary measures in order to bring the legislation into conformity with the Convention in accordance with the abovementioned principles. The Committee noted the Government's indication that the Department of Labour is in consultation with the Central Government for amendments to be tabled before Parliament for approval. *The Committee requests the Government to provide information on any development in this regard.*

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

## Georgia

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

The Committee takes due note of the Government's reply to the observations of the International Trade Union Confederation (ITUC), Education International (EI), the Educators Scientists Free Trade Union of Georgia (ESFTUG) and the Georgian Trade Union Confederation (GTUC) received respectively on 1, 17 and 29 September 2014 and referring to the issues raised by the Committee below. The Committee further takes note of the observations of the ITUC and the GTUC received on 4 September 2017 referring to the alleged use of force by the authorities during a peaceful protest and the Government's reply thereon.

*Article 2 of the Convention. Minimum membership requirement.* In its previous comments, the Committee had welcomed the amendment of section 2(9) of the Law on Trade Unions so as to lower the minimum membership requirement for establishing a trade union from 100 to 50. The Committee had requested the Government to review, in consultation with the most representative workers' and employers' organizations, the impact of the amendment in practice and to take steps for its amendment if it is found that the new minimum number required still hinders the establishment of trade unions in small and medium-sized enterprises. The Committee notes the Government's indication that the consultations concerning section 2(9) of the Law on Trade Unions have started and the result of it will be transmitted to the Tripartite Social Partnership Commission for decision, which will be then transmitted to the Committee. ***The Committee hopes that the Government will pursue, in consultation with the social partners, its efforts in assessing the impact of the amendment of section 2(9) of the Law on Trade Unions and will take the necessary measures for its amendment in the near future if it is found that the new minimum number required still hinders the establishment of trade unions in small and medium-sized enterprises. The Committee requests the Government to supply information on all progress made in this respect.***

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

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

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 and the observations of the Georgian Trade Union Confederation (GTUC) received on 4 September 2017 containing allegations of acts of anti-union discrimination and violation of the right to bargain collectively, as well as the Government's reply thereon. The Committee also takes note of the Government's reply to the observations provided by the ITUC in 2015 and 2016 and to the observations provided by Education International (EI), the Educators Scientists Free Trade Union of Georgia (ESFTUG) and the GTUC received in 2014.

*Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee had noted that according to section 5(8) of the Labour Code, an employer was not required to substantiate their decision for not recruiting an applicant, even in the event of an allegation of anti-union discrimination. The Committee had requested the Government to provide information on any complaints of anti-union discrimination at the time of hiring and any relevant court judgments, as well as to indicate whether section 5(8) of the Labour Code has been invoked in such cases. The Committee notes the Government's information that in support of section 2(3) of the Labour Code which prohibits discrimination, the Law of Georgia on the Elimination of All Forms of Discrimination was adopted in 2014 enabling the Public Defender of Georgia to monitor issues regarding elimination of discrimination, to ensure equality and to discuss the applications and complaints for discrimination. In this respect, the Committee also notes the Government's indication that the amendments to different laws, including the Organic Law of Georgia on the Public Defender, now authorize the Public Defender to issue a fine for public institutions, organizations, private and legal entities for not fulfilling recommendations on the facts of discrimination in labour pre-contractual relations. The Committee further notes that the Government indicates that since the Law of Georgia on the Elimination of All Forms of Discrimination entered into force, nine facts of possible discrimination on the ground of membership of trade unions have been discussed by the Office of the Public Defender, including two cases where the Public Defender presented their opinion, one case where a recommendation on direct discrimination has been issued and six cases where proceedings have been terminated. None of these cases referred to discrimination in pre-contractual relations and no cases regarding discrimination have been assessed by the courts. ***Taking due note of the adoption of the Law of Georgia on the Elimination of All Forms of Discrimination, the Committee requests the Government to continue providing information on any complaints of anti-union discrimination at the time of hiring, as well as to indicate whether section 5(8) of the Labour Code has been invoked in such cases. The Committee further requests the Government to indicate which provisions allow the Public Defender of Georgia to issue a fine in case of discrimination in labour pre-contractual relations and to provide detailed information on the number of cases where these provisions may have been invoked.***

*Article 2. Interference by employers in internal trade union affairs.* In its previous comments, the Committee had requested the Government to confirm that section 40.3 of the Labour Code, which provides that any form of interference by employers and employees' associations in each other's activities is strictly prohibited, covers not only acts of

interference between organizations but also instances where individual employers may interfere in employees' associations, and to indicate the remedies and/or sanctions provided in such cases under section 40.3 of the Labour Code. The Committee notes the Government's information that section 5 of the Law of Georgia on Trade Unions provides that trade unions and federations of trade unions are independent from employers and employers' confederations (unions, associations). **Recalling the need for the legislation to make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions for acts of interference against workers' and employers' organizations, the Committee requests the Government to indicate the provisions which state the remedies and/or sanctions for violation of section 40.3 of the Labour Code and section 5 of the Law of Georgia on Trade Unions. The Committee requests the Government to continue providing any administrative or judicial decision in this respect.**

Furthermore, the Committee previously requested the Government to provide information on the progress made with respect to the establishment of a State monitoring agency on labour conditions and labour rights issues in consultation with the social partners and with the support of the ILO project on improved compliance with labour laws in Georgia, and to provide detailed information on the application of the Convention in practice. The Committee notes the information provided by the Government regarding the elaboration of a legislative framework on occupational safety and health authorizing the Labour Conditions Inspection Department to conduct inspections with the aim of identifying possible cases of forced labour or labour exploitation. While taking note of this information, the Committee **regrets** that the legislative framework under preparation does not allow for inspections aimed at monitoring compliance with trade union rights. The Committee considers that the existence of such a monitoring would contribute to the resolution and prevention of the persistent allegations of acts of anti-union discrimination and violation of collective bargaining rights raised by several international and national trade union organizations. **The Committee hopes that further steps will be taken by the Government so as to ensure that compliance with the rights enshrined in the Convention is subject to monitoring by the public authorities.**

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee requested the Government to continue to inform on the actions taken to promote collective bargaining both in the public and private sectors and on the number of collective agreements signed and the number of workers covered. The Committee notes that the Government indicates that the Ministry of Labour, Health and Social Affairs does not record collective agreements and, as a result, does not have the information requested. **Emphasizing that the compilation of statistics on collective agreements is an important element of policies aimed at promoting collective bargaining, the Committee once again requests the Government to provide information on the number of collective agreements signed and the number of workers covered.**

The Committee previously requested the Government to inform about the process of strengthening the labour administration and institutionalizing social dialogue and to inform on the results of the mediation of ongoing labour disputes. The Committee notes the Government's information on the Tripartite Social Partnership Commission (TSPC) meeting held on 10 February 2017, where a roster of mediators consisting of 11 independent, neutral, impartial and qualified mediators was approved for a period of three years. The Committee further notes that the Ministry of Labour, Health and Social Affairs is currently working on the amendment of Decree N301 on Labour Dispute Settlement Procedures aimed at establishing a mechanism for effective resolution of collective labour disputes within short periods of time and at no expense. The Committee also takes note of the statistics provided by the Government with regard to the results of the mediation of ongoing labour disputes. **The Committee welcomes the steps taken to make the mechanism more functional and effective and requests the Government to continue to provide information on any progress in this regard, and in particular on the adoption of the amendment of Decree N301 on Labour Dispute Settlement Procedures, in consultation with the social partners.**

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

## Germany

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

The Committee notes the observations received on 1 September 2015 from the International Organisation of Employers (IOE) and the Confederation of German Employers' Associations (BDA), which are of a general nature. The Committee notes the observations received on 1 September 2017 from the BDA, endorsed by the IOE, which relate to matters examined by the Committee below. The Committee also notes the Government's reply to the 2014 observations of the International Trade Union Confederation (ITUC) and to the 2012 observations from the German Confederation of Trade Unions (DGB). In particular, the Committee notes with **interest** that, in relation to the 2012 DGB observations denouncing the lack of a general prohibition of the use in non-essential services of temporary workers as strike breakers, the Government indicates that national legislation has been amended to ensure that the receiver is no longer allowed to hire agency workers as strike breakers. According to section 11(5) of the Manpower Provision Act, in effect from 1 April 2017, the receiver shall not allow agency workers to work if the business is directly involved in a labour dispute.

*Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes.* The Committee recalls that it has been requesting for a number of years the adoption of

measures to recognize the right of public servants who are not exercising authority in the name of the State to have recourse to strike action. In its previous observation, the Committee had noted with interest a ruling handed down by the Federal Administrative Court on 27 February 2014 holding that, given that the constitutional strike ban depends on the status group and is valid for all civil servants (*Beamte*) irrespective of their duties and responsibilities, there is a collision with the European Convention on Human Rights in the case of civil servants (*Beamte*) who are not active in genuinely sovereign domains (*hoheitliche Befugnisse*), for instance teachers in public schools, and this collision should be solved by the federal legislator; and that, in the case of civil servants (*Beamte*) who exercise sovereign authority, there is no collision with the European Convention on Human Rights and thus no need for action. The Committee had further noted the Government's indication in this regard that, for civil servants (*Beamte*) not exercising sovereign authority, the legislator must bring about a balancing of the mutually exclusive legal positions under Article 33(5) of the Basic Law and the European Convention on Human Rights; that, in the meantime, the constitutional strike ban for civil servants (*Beamte*) remained in force; and that, given that union representatives would refer the matter to the Federal Constitutional Court and that two proceedings on the same subject matter were already pending before it, legislative measures should not forestall the clarification and resolution of the issues by that Court. In light of the above, the Committee had requested the Government to refrain in the future from imposing disciplinary sanctions against any civil servants not exercising authority in the name of the State who participate in peaceful strikes; and to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring possible ways of bringing the legislation into conformity with the Convention. The Committee also requested the Government to provide information on any ruling handed down by the Federal Constitutional Court on the subject.

The Committee notes that the Government reiterates that: (i) under the German Constitution, the public service (*öffentlicher Dienst*) is linked with the institutional guarantee of a professional civil service (*Berufsbeamtentum*), which must be regulated taking into account the traditional principles of the professional civil service (*hergebrachte Grundsätze des Berufsbeamtentums*); (ii) one of those principles is the prohibition on civil servants from participating in industrial action, as the “right to strike” is incompatible with the relationship of service and loyalty, and conflicts with the structural decision that relationships governed by civil service law are regulated by the legislature; and (iii) the prohibition on strike action is compensated for by various rights and principles, such as the principle of a salary commensurate with the civil service position; the characterization of the subjective rights of Article 33(5) of the Basic Law as being equivalent to fundamental rights; and participation rights of the leading organizations of trade unions and employers' associations in the legislative process and other corporate participation rights in the Lander. With regard to the 2014 judgement of the Federal Administrative Court, the Government states that, in its view, the case law of the European Court of Human Rights is not capable of altering these constitutional circumstances, since, despite a functional approach to exception clauses relating to sovereignty, the case law on Article 11 of the European Convention on Human Rights (ECHR) does not exclude the classification of teachers as “members of the administration of the State” within the meaning of the second sentence of Article 11(2). On the contrary, the Government believes that the prohibition on strike action of teachers who have civil servant status is compatible with Article 11(1), given that the interference is justified under Article 11(2) by the legitimate aim of guaranteeing the right to education. The Government adds that the relevant decisions of the Federal Administrative Court are currently the subject of proceedings before the Federal Constitutional Court.

The Committee notes that, according to the BDA: (i) the Federal Administrative Court, in its 2014 judgment, held that, on one side the general strike prohibition on civil servants applies as a conventional principle pursuant to Article 33(5) of the Basic Law and, on the other side, this prohibition of strikes for officials outside the genuinely sovereign domain is incompatible with the freedom of association of Article 11 of the ECHR; (ii) the Federal Administrative Court confirmed in its decision of 26 February 2015 that it is the task of the federal legislator to establish a balance between the incompatible requirements of Article 33(5) of the Basic Law and Article 11 of the ECHR; and that, as long as this has not been done, the public-law strike prohibition, continues to apply and is a disciplinary rule; (iii) the strike ban in Article 33(5) of the Basic Law constitutes an exception to the right to freedom of association guaranteed in Article 9(3) of the Basic Law; (iv) the legislator has different options to adopt a compliant legislation, for example, as a functional matter, by determining areas of genuinely sovereign domains for which a general strike ban should apply, and areas of public administration, where the unilateral regulatory power of the employer should be restricted to extend the participation of representative organizations in the public service; and (v) this issue will be further discussed at national level by the Government and the social partners. Generally, the BDA considers that: (i) as there is no existing legal regulation fully encompassing industrial action, the German employers advocate for a comprehensive regulatory approach, which would take into account the 1950s and 1960s jurisprudence, highlighting that strikes are socio-politically and economically highly undesirable and involve negative consequences for the German national economy, and that this holds especially true in times of growing internationalization and digitalization; (ii) in order to re-establish the balance between the social partners, the legislator must establish appropriate regulations correcting significantly the aberrations created by jurisprudence in past decades and establishing a *numerus clausus* of permissible means of industrial action (essentially lockout for employers and strikes for employees; any means of industrial action involving a “flash mob” must be illegitimate); and (iii) BDA opposes a right to strike for civil servants because they have duties of loyalty towards their employer (the State and the community) and because there would be great discontent in the general public if civil servants went on strike for a wage increase since their payment is indirectly financed by the community through taxes.

The Committee notes with *concern* that the more recent ruling of the Federal Administrative Court handed down on 26 February 2015 upholds the disciplinary action imposed on a teacher with civil servant status (*Beamte*) for having participated in industrial action. The Federal Administrative Court reiterates that the conflict between the general strike prohibition on civil servants who are not engaged in genuinely sovereign domains pursuant to Article 33(5) of the Basic Law and, on the other side, the right to freedom of association under Article 11 of the ECHR, can only be solved by the federal legislator and not by the tribunals. *Noting that the Federal Constitutional Court will soon decide on the constitutional complaint raised following the Federal Administrative Court judgment of 27 February 2014, the Committee requests the Government to provide a copy of that decision, as soon as it is handed down, as well as any other pending decision to be issued by the Federal Constitutional Court on the subject. In view of the collision ascertained by the Federal Administrative Court between Article 33(5) of the Basic Law and Article 11 of the ECHR, and in light of the persisting need highlighted by the Committee for many years to bring the legislation into full conformity with the Convention with regard to the same aspect, the Committee once again requests the Government to:* (i) refrain, pending the relevant decision of the Federal Constitutional Court, from imposing disciplinary sanctions against civil servants not exercising authority in the name of the State (such as teachers, postal workers and railway employees) who participate in peaceful strikes; and (ii) to engage in a comprehensive national dialogue with representative organizations in the public service with a view to finding possible ways of aligning the legislation with the Convention.

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

The Committee notes the observations received on 1 September 2017 from the Confederation of German Employers' Associations (BDA), endorsed by the International Organisation of Employers (IOE), which mainly relate to matters under examination by the Committee in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee also notes the Government's reply to the 2014 observations of the International Trade Union Confederation (ITUC).

*Articles 4 and 6 of the Convention. Right to collective bargaining with respect to conditions of employment of public servants not engaged in the administration of the State.* The Committee recalls that it has been requesting, for a number of years, the adoption of measures to ensure that public servants who are not engaged in the administration of the State, enjoy the right to collective bargaining. The Committee had previously noted with interest a ruling handed down by the Federal Administrative Court in 2014 holding that, while the prohibition of collective bargaining deriving from article 33(5) of the Basic Law is linked to the civil servant status and applies to all civil servants irrespective of their duties, Article 11(2) of the European Convention on Human Rights (ECHR) provides that restrictions to freedom of association could only be justified by the relevant function of the civil servant; and that, in the case of civil servants not exercising sovereign authority of the State, for instance teachers in public schools, there is a collision, which needs to be solved by the federal legislator. The Government added that, according to the Federal Administrative Court, in view of the collision between article 33(5) of the Basic Law and article 11 of the ECHR, the federal legislator needed to considerably broaden, in public service domains that were not characterized by the exercise of genuinely sovereign authority, the participation rights of trade unions of civil servants towards a negotiation model. The Committee requested the Government to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring possible ways in which the current system could be developed to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State.

The Committee notes that the Government indicates in relation to the employment of teachers or their appointment to a civil servant position that the way in which the State wishes to perform its duties is generally left to its discretion, with the exception of the restriction enshrined in the principle of reserved functions under article 33(4) of the Basic Law, which requires that certain areas be staffed by civil servants; however, this does not remove the State's organizational sovereignty and does not prohibit the State from conferring civil servant status. In this regard the Government supplies several judgments issued in the past by the Federal Constitutional Court. The Committee also notes that the Government refers to its explanations in its report concerning Convention No. 87, according to which: (i) under the German Constitution, the professional civil service must be regulated taking into account the traditional principles of the professional civil service; (ii) one of those principles is the prohibition on civil servants from participating in industrial action, as it is incompatible with the relationship of service and loyalty and with the structural decision that relationships governed by civil service law are regulated by the legislature; (iii) this prohibition is compensated for by various rights and principles, such as the principle of a salary commensurate with the civil service position and participation rights of the leading organizations of trade unions and employers' associations in the legislative process; and (iv) as to the judgment of the Federal Administrative Court, the case law of the European Court of Human Rights is, in the Government's view, not capable of altering these constitutional circumstances, since, despite a functional approach to exception clauses relating to sovereignty, the case law on article 11 of the ECHR does not exclude the classification of teachers as "members of the administration of the State" within the meaning of article 11(2), and the restriction of collective rights is justified by the legitimate aim of guaranteeing the right to education. The Government adds that the relevant decisions of the Federal Administrative Court are currently the subject of proceedings before the Federal Constitutional Court. In this context, the Committee notes from the observations of the BDA, which are mainly reflected under Convention No. 87, the BDA's

view that, in light of the Federal Administrative Court judgment, the legislator has different options to implement a legislation in compliance with article 11 of the ECHR, for example by differentiating between areas of genuinely sovereign domains and areas where the unilateral regulatory power of the employer could be restricted to extend the participation of representative organizations in the public service; and that this issue will be further discussed at national level by the Government and the social partners, since this implies a revision of the Basic Law, the German Constitution.

***The Committee requests the Government to provide a copy of the decision of the Federal Constitutional Court on the constitutional complaint raised following the Federal Administrative Court judgment of 27 February 2014, as soon as it is handed down, as well as any other pending decision to be issued by the Federal Constitutional Court on the subject.*** The Committee recalls that it has been highlighting for many years that, pursuant to Articles 4 and 6 of the Convention, all public service workers, other than those engaged in the administration of the State, should enjoy collective bargaining rights. ***Taking due note of the Federal Administrative Court judgment of 27 February 2014 and the pending decision of the Federal Constitutional Court on the related constitutional complaint, the Committee requests once again the Government to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring innovative solutions and possible ways in which the current system could be developed so as to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State, including for instance, as indicated by the BDA, by differentiating between areas of genuinely sovereign domains and areas where the unilateral regulatory power of the employer could be restricted to extend the participation of representative organizations in the public service.***

## Ghana

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017, the content of which is being examined under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

***Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination.*** In its previous observation, the Committee requested the Government to provide detailed information on the nature and outcome of the inquiries carried out into allegations of anti-union discrimination made by the ITUC in 2009 and 2011 and to ensure the application of sufficiently dissuasive sanctions in all cases where they proved to be well founded. The Committee ***regrets*** that the only information transmitted by the Government with regard to these allegations is a mere reference to the Labour Act, 2003 (Act 651) and provisions concerning termination of appointment by the employers. ***The Committee, once again, firmly requests the Government to provide detailed information on the nature and outcome of the inquiries carried out into allegations of anti-union discrimination made by the ITUC, including information on any sanctions or remedies applied in any cases in which the allegations were found to be substantiated.***

***Article 4. Collective bargaining certification.*** In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the legislation clearly provides for an election with a view to determining the most representative union for the purposes of collective bargaining in the event of plurality of trade unions in workplaces. The Committee notes that the Government reiterates that in practice, the Chief Labour Officer calls a meeting to discuss with the union representatives the mode of verification and venue for elections to determine the most representative union and that elections are held when a consensus is reached by all the stakeholders. The Committee takes note that this process is based on section 10(1) of the Labour Regulations, 2007. ***Recalling that the criteria to be applied to determine the representative status of organizations for the purpose of bargaining must be objective, pre-established and precise so as to avoid any opportunity for partiality or abuse (see the 2012 General Survey on the fundamental Conventions, paragraph 228), the Committee requests the Government to indicate the procedure to be followed in the event that no consensus is reached by all the stakeholders with regard to the mode of verification and venue of elections for the determination of the most representative union.***

***Article 5. Prison staff.*** In its previous comments, the Committee requested the Government to take the necessary measures to ensure that prison staff enjoyed the right to organize and bargain collectively whether through amendment to the Labour Act or other legislative means. The Committee notes that the Government indicates that prisons services staff are excluded from the right to form a union guaranteed by the Labour Act because they have their own mode of handling their social and welfare issues, but that the concerns raised are being considered by the appropriate authorities. ***Recalling once again that the provisions of the Convention apply to prison staff, the Committee requests the Government to take the necessary measures to ensure that prison staff may exercise the guarantees in the Convention through organizations capable of defending their interests, including in collective bargaining, and to provide information on development made by the appropriate authorities in this regard.***

## Greece

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

The Committee notes that the Government's report has not been received. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee further notes the detailed observations provided by the Greek General Confederation of Labour (GSEE) dated 31 August 2016 and 31 August 2017 generally concerning the state of play of labour norms and rights in Greece, 2010–17, the impact of the measures in the framework of the country's stability programme and memorandum of understanding conditionality, and in particular specific observations in relation to the application of the Convention. *The Committee expresses its firm expectation that the Government will provide detailed information in reply to the GSEE observations and on all the matters raised in the Committee's previous comments for its consideration at its next meeting.*

In its previous comments, the Committee had noted the observations by the International Trade Union Confederation (ITUC) received on 1 September 2014. *The Committee recalls that the observations of the ITUC concerned clashes with the police forces during a protest action in a shipyard, followed by the arrest of workers and charges against 12 trade unionists, and once again requests the Government to provide its comments thereon. The Committee had also noted the observations received on 19 November 2014 from the International Transport Workers' Federation (ITF) and the Panhellenic Seamen's Federation (PNO) concerning an imminent trial for participation in a general strike in 2013 and once again requests the Government to provide its comments thereon.*

*Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes.* The Committee recalls that in its previous comments it had requested the Government to reply to the concerns that had been raised by the GSEE in relation to the closure of the Workers' Housing Organization (OEK) and the Workers' Social Fund (OEE). The Committee had noted the Government's indication that the Organization for Mediation and Arbitration (OMED) had become the full successor to all rights and obligations of these two bodies. It had further noted with interest that in 2013 the annual financial support for trade unions resumed and a Joint Ministerial Decision was issued in 2014 on coverage for trade unions and the Institute of Labour of the GSEE which, according to the Government, was aimed at assisting the collective organization and action of the labour force with a view to improving their living standards and provides various subsidies to trade unions. *The Committee requests the Government to provide its comments on the latest observations of the GSEE in relation to the representation and activities of the OMED.*

*[The Government is asked to reply in full to the present comments in 2018.]*

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee further notes the detailed observations provided by the Greek General Confederation of Labour (GSEE) dated 31 August 2016 and 31 August 2017 generally concerning the state of play of labour norms and rights in Greece, 2010–17, the impact of the measures in the framework of the country's stability programme and memorandum of understanding conditionality, and specific observations in relation to the application of the Convention. *The Committee expresses its firm expectation that the Government will provide detailed information in reply to the GSEE observations and on all the matters raised in its previous comments for its consideration at its next meeting.*

The Committee notes the observations by the International Trade Union Confederation (ITUC) received on 1 September 2014 and the Government's reply to the ITUC's 2013 observations. The Committee further takes note of the observations provided by the International Organisation of Employers (IOE) in a communication received on 1 September 2014, and the Government's reply to the 2013 observations from the IOE and the Hellenic Federation of Enterprises and Industries (SEV). Finally, the Committee notes the observations of the SEV received on 25 September 2014.

In its previous comments, the Committee noted a number of workshops and seminars that had been held relating to the promotion of sound industrial relations and social dialogue in times of crisis and that a cooperation agreement, including social dialogue as one of the thematic areas, was being negotiated between the ILO and the Government. The Committee notes with *interest* the signing of the cooperation agreement with the ILO and the ongoing work carried out in relation to this Convention within that framework.

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee notes with *interest* that the Greek General Confederation of Labour (GSEE), the General Confederation of Professionals, Craftsmen and Merchants (GSEVEE), the National Confederation of Greek Commerce (ESEE) and the Association of Greek Tourism Enterprises (SETE) have signed another National General Labour Collective Agreement for the year 2014. The Committee further notes the Government's indication relating to the involvement of the social partners in the development and elaboration of a number of policies, including the National Action Plan on Youth Guarantee, and in the development of an integrated system for the identification of labour

market needs. The Government also refers to the establishment in April 2014 of the Government Employment Council charged with promoting new initiatives aimed at fostering employment, which is also to engage with the social partners, including through their participation in a permanent mechanism for consultation, planning and evaluation of employment policies and programmes.

*Enterprise-level collective agreements and association of persons.* The Committee recalls its previous comments concerning Act No. 3845/2010 which provided that: “Professional and enterprise collective agreements’ clauses can (from now on) deviate from the relevant clauses of sectoral and general national agreements, as well as sectoral collective agreements’ clauses can deviate from the relevant clauses of national general collective agreements. All relevant details for the application of this provision can be defined by Ministerial Decision.” As regards the matter of the association of persons, the Committee had noted that Act No. 4024/2011 provided that, where there is no trade union in the company, an association of persons is competent to conclude a firm-level collective agreement. The Committee had previously expressed concern that, given the prevalence of small enterprises in the Greek labour market, the facilitation of association of persons, combined with the abolition of the favourability principle set out first in Act No. 3845/2010 and given concrete application in Act No. 4024/2011, would have a severely detrimental impact upon the foundation of collective bargaining in the country.

The Committee now observes from the latest statistics provided by the Government that, in 2013, 409 enterprise collective agreements had been signed, 218 of which by associations of persons and 191 by trade unions. Up to 30 June 2014, 188 enterprise-level collective agreements were signed, 96 of which were signed between employers and associations of persons, and 92 with trade unions. In addition, 86 sectoral agreements, two national occupational and three local occupational agreements have been submitted to the competent department of the Ministry of Labour, Social Security and Welfare, yet no arbitration award has been submitted.

The Committee also notes the ITUC’s observation on this point that, in 2013, 313 enterprise-level agreements were signed, 178 of which were signed with associations of persons (156 providing for wage cuts), and only 135 by trade unions (42 providing for wage cuts).

***Recalling the importance of promoting collective bargaining with workers’ organizations and thus improving collective bargaining coverage, the Committee once again requests the Government to indicate the steps taken to promote collective bargaining with trade unions at all levels, including by considering, in consultation with the social partners, the possibility of trade union sections being formed in small enterprises.***

The Committee notes the observations of the SEV that the Council of State rendered a decision finding that the provision in Act No. 4046 of 14 February 2012, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional. The SEV criticizes this judgment as contrary to the Convention and moreover expresses its deep concern that renewed unilateral recourse to compulsory arbitration will suffocate collective bargaining, as it has always done in Greece. The Committee notes that the Government merely refers to the Council of State decision in its report but does not reply to the concerns raised by the SEV.

The Committee recalls its earlier consideration of the arbitration regime prior to the suppression of unilateral recourse in which it found it not to be contrary to the Convention in so far as it addressed only the basic wage at national or sectoral/occupational level in a context where machinery for minimum wage fixing was yet to be developed. The Committee must nevertheless emphasize that, as a general rule, legislative provisions which permit either party unilaterally to request compulsory arbitration for the settlement of a dispute does not promote voluntary collective bargaining and is thus contrary to the Convention. ***The Committee therefore trusts that the measures taken by the Government to respond to the Council of State decision will fully take into account the above considerations and requests it to provide detailed information in this regard and to reply fully to the concerns raised by the SEV.***

*Articles 1 and 3. Protection against anti-union dismissal.* In its previous comments, the Committee had requested the Government to provide its observations on the comments made by the GSEE relating to the vulnerability of workers to anti-union dismissal within the framework of the introduction of flexible forms of work. The Committee notes the indication in the Government’s report to the effect that no legislative change has been made that would diminish the protection level of trade union officials. The Committee recalls, however, that the comments made by the GSEE referred more broadly to the impact that the current context in the country and measures facilitating flexible forms of work might have in weakening the *practical* application of legal protections. ***The Committee therefore once again requests the Government to provide information and statistics relating to complaints of anti-union discrimination and any remedial action taken with its next report.***

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

## Guatemala

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 and 4 September 2017, and the joint observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, received on 30 August 2017. ***The Committee notes that these observations refer to issues examined in the present comment and to complaints of violations in practice regarding which the Committee requests the Government to send its comments.***

The Committee also notes the observations of the International Organisation of Employers (IOE) and the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), both received on 1 September 2017, which refer to matters examined by the Committee in the present comment.

#### ***Complaint made under article 26 of the ILO Constitution concerning non-observance of the Convention***

The Committee notes in particular that the Governing Body, at its 331st Session (October–November 2017), welcomed the agreement reached by the Guatemalan tripartite constituents on 2 November 2017 in order to achieve the

full implementation of the roadmap adopted in October 2013 and thereby resolve the matters raised in the complaint submitted under article 26 of the ILO Constitution by various Worker delegates to the 101st Session of the International Labour Conference (May–June 2012) concerning non-observance of the Convention by Guatemala. The Committee notes that, on the basis of the foregoing, the Governing Body: (i) urged the Government, together with the Guatemalan social partners and with the technical assistance of the Office and of its representative in Guatemala, to devote all the efforts and resources needed to implement the national tripartite agreement aimed at settling the unresolved matters in the roadmap; and (ii) deferred until its 332nd Session (March 2018) the decision on the appointment of a Commission of Inquiry.

The Committee notes with *interest* that the tripartite agreement provides for: (i) the establishment of a Tripartite National Committee on Labour Relations and Freedom of Association responsible, inter alia, for guiding the actions necessary for implementation of the roadmap; and (ii) by March 2018, the presentation to the National Congress, using a tripartite approach, of the legislative proposals referred to in point 5 of the roadmap, the objective of which is to bring the national legislation into line with the Convention.

### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)***

The Committee notes the discussion held in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2017 on the application of the Convention by Guatemala. The Committee notes in particular that the Conference Committee requested the Government to: (i) continue to investigate, with the involvement of the Public Prosecutor's Office, all acts of violence against trade union leaders and members, with a view to identifying and understanding the root causes of violence, understanding whether trade union activities was a motive, determining responsibilities and punishing the perpetrators; (ii) continue to strengthen the operation of the Conflict Resolution Committee, including in relation to the complementarity between the Conflict Resolution Committee and the judicial mechanisms for the protection of freedom of association; (iii) eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners and with the support of the Special Representative of the Director-General, review the handling of registration applications; (iv) continue to provide rapid and effective protection to all trade union leaders and members who are under threat so as to ensure that protected individuals do not personally have to bear any costs arising from those schemes; (v) ensure the effective operation of the Special Investigation Unit for Crimes against Trade Unionists of the Public Prosecutor's Office by allocating the necessary resources; (vi) increase the visibility of the awareness-raising campaign on freedom of association in the mass media and ensure that there is no stigmatization whatsoever against collective agreements existing in the public sector; (vii) continue taking the necessary steps to fully implement the roadmap adopted on 17 October 2013 in consultation with the social partners; and (viii) continue to engage with the Special Representative of the Director-General in Guatemala in pursuing the implementation of the Memorandum of Understanding and the roadmap.

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

The Committee notes with *regret* that for a number of years, in the same way as the Committee on Freedom of Association, it has been examining allegations of serious acts of violence against trade union leaders and members, including numerous murders, and the related situation of impunity. The Committee notes the information provided by the Government, both in its report on the application of the present Convention and in its report of October 2017 to the Governing Body as part of the follow-up to the complaint submitted under article 26 of the ILO Constitution. The Committee takes special note of the Government's indication that: (i) with regard to the 89 recorded murders of trade union leaders and members, 21 verdicts have been issued to date (16 convictions, four acquittals and one judgment imposing security measures); (ii) of these 21 verdicts, five were issued in 2017; (iii) three convictions recently secured by the Public Prosecutor's Office were handed down by courts for high-risk proceedings, including those involving offences against trade unionists' life, further to a decision of the Criminal Chamber; (iv) in addition to the rulings handed down, significant progress has been made in investigations or proceedings relating to another five murders and one attempted murder, including the killing of Mr Tomás Francisco Ochoa Salazar, Disputes Secretary of the SITRABREMEN trade union organization, which occurred on 1 September 2017; (v) through the coordinated action of the Special Unit at the Public Prosecutor's Office for the Investigation of Crimes against Trade Unionists (Special Investigation Unit) and the Office of the Deputy Minister for Security at the Ministry of the Interior; three arrest warrants were issued and a fourth person was summoned to make an initial statement; (vi) collaboration is ongoing with the International Commission against Impunity in Guatemala (CICIG) in relation to the investigation of a list of 12 murders compiled by the trade union movement; (vii) the Trade Union Committee at the Public Prosecutor's Office continues to function; (viii) Directive No. 1-2015 of the Public Prosecutor's Office has been applied in every case of anti-union violence resolved since 2015 and all the investigation files record steps taken to establish any trade union involvement of the victims; and (ix) the abovementioned Special Investigation Unit has been restructured and now comprises 19 persons and three inspection departments (one dealing with investigations into violent deaths and two dealing with non-compliance with judicial orders for reinstatement).

The Committee also notes the information provided by the Government concerning protection measures for members of the trade union movement at risk. The Government indicates that: (i) all requests for protection measures for members of the trade union movement received by the Ministry of the Interior give rise to a risk assessment; (ii) on the

basis of such studies, 28 security measures covering specific locations and two personal security measures were granted between January and July 2017; and (iii) the Protocol for the implementation of immediate and preventive security measures for trade union members, union leaders and labour rights advocates was adopted and published, the content having been agreed upon by the trade unions.

The Committee also notes that the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, and also the ITUC, in their observations on the application of the present Convention and in their report of October 2017 to the Governing Body as part of the follow-up to the complaint submitted under article 26 of the ILO Constitution, report: (i) the persistence of numerous attacks and threats against members of the trade union movement; (ii) a lack of tangible progress with regard to the investigation of the 89 murders of trade unionists and the securing of convictions for the perpetrators; (iii) serious methodological defects in the investigation conducted by the Public Prosecutor's Office and, in particular, failure to take account of the trade union activities of the victims when investigating the motives for the murders; (iv) minimal attention given to identifying the instigators of the offences; (v) a persistent lack of human and financial resources for the Special Investigation Unit; and (vi) apart from the murder cases, a lack of investigation, let alone any imposition of penalties, regarding other anti-union criminal acts.

The Committee also notes with *deep concern* that the abovementioned trade union organizations specifically report: (i) the murder on 9 November 2016 of Mr Eliseo Villatoro Cardona, leader of the Union of Organized Municipal Employees of Tiquisate (SEMOT), an organization affiliated to the Guatemalan Union, Indigenous and Peasant Movement (MSICG), after SEMOT had received numerous threats from the municipal authorities; (ii) the killing on 23 June 2017, by a security guard at a ranch in Coatepeque, of Mr Eugenio López, aged 72, during a peaceful demonstration of current and former ranch workers to demand the payment of their employment benefits; and (iii) the murder on 1 September 2017 of Mr Tomás Francisco Ochoa Salazar, Disputes Secretary of the SITRABREMEN union, in a climate of bullying and harassment of the members of that union. Lastly, the Committee notes the 2016 annual report of the Human Rights Procurator's Office of Guatemala, indicating that 30 attacks on trade unionists were recorded between January and November 2016.

The Committee *deplores* that there persist numerous allegations of acts of anti-union violence and further murders of trade union leaders and members. While taking due note of the five judgments handed down in 2017 in relation to murders of members of the trade union movement, the Committee notes with *regret* the continuing impunity in the vast majority of cases of recorded murders of trade unionists. In the same way as the Committee on Freedom of Association in the context of Case No. 2609 (382nd Report, paragraphs 315–353), the Committee once again expresses its particular *concern* at the lack of progress in the investigations of murders in which evidence has already been found of a possible anti-union motive. ***In light of the above, the Committee firmly urges the Government to intensify its efforts to: (i) investigate all acts of violence against trade union leaders and members with a view to determining responsibilities and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations; and (ii) provide prompt and effective protection for all trade union leaders and members who are at risk. In particular, the Committee urges the Government, as part of the implementation of the tripartite agreement of November 2017, to intensify its efforts to: (i) allocate additional financial and human resources to the Special Unit at the Public Prosecutor's Office for the Investigation of Crimes against Trade Unionists; (ii) increase the collaboration initiated between the Public Prosecutor's Office and the CICIG; (iii) invest additional effort and resources in investigations into murder cases where possible anti-union motives have already been identified; (iv) examine in the courts for high-risk proceedings a greater number of murders of trade unionists; and (v) increase the budget allocated to protection schemes for trade unionists. The Committee requests the Government to continue providing information on all the measures adopted and the results achieved in this respect. As regards the alleged absence of investigations and penalties regarding anti-union offences that do not involve physical violence, the Committee requests the Government to conduct an assessment with the competent authorities into the adequacy of existing criminal legislation.***

### Legislative issues

*Articles 2 and 3 of the Convention.* The Committee recalls that for many years it has been asking the Government to take measures to amend the following legislative provisions:

- section 215(c) of the Labour Code, which requires a membership of “50 per cent plus one” of the workers in the sector to establish a sector trade union;
- sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be able to be elected as a trade union leader;
- section 241 of the Labour Code, under the terms of which, in order to be lawful, strikes have to be called by a majority of the workers and not by a majority of those casting votes;
- section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996, which provides for the possibility of imposing compulsory arbitration in non-essential services and establishes other obstacles to the right to strike;
- and sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises.

In addition, the Committee has been asking the Government for many years to take measures to ensure that various categories of public sector workers (engaged under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

In its previous observation, the Committee noted with interest various aspects of Bill No. 5199 and observed that certain comments of the Committee were not being taken into consideration in the aforementioned Bill. The Committee notes that, with support from the Representative of the Director-General in Guatemala, bipartite discussions have been held throughout 2017 between the employers and workers, resulting in: (i) a consensus on the reform of the provisions of the Penal Code relating to strikes, on which the Committee has been commenting for many years; and (ii) on a bipartite request for Bill No. 5199 to be withdrawn from the National Congress to enable the social partners to reach further agreements on the content of the text.

The Committee further observes that the tripartite agreement signed in November 2017 provides for the presentation to the National Congress by March 2018, using a tripartite approach, of the legislative proposals referred to in point 5 of the roadmap, the objective of which is to bring the national legislation into line with the Convention. The Committee notes with *interest* that the agreement refers specifically to the following matters on which tripartite consensus will be sought to amend the legislation: (i) the application of the labour legislation to temporary contracts and special regimes in the public sector; (ii) the mechanisms and requirements applicable to sectoral collective bargaining covering, inter alia, the thresholds for the establishment of sectoral trade union organizations, the right to engage in collective bargaining, and the identification of the most representative organization; (iii) the rules applicable to strike votes; and (iv) the determination of the list of essential services.

***Recalling that the Government and the social partners may seek technical assistance from the Office to support them in amending the legislation, the Committee expects that the Government will soon be in a position to report the adoption of legislation which fully complies with the obligations contained in the Convention.***

#### ***Application of the Convention in practice***

***Registration of trade unions.*** In its previous comment, the Committee asked the Government to pursue, with the technical assistance of the Office, more in-depth dialogue with the trade unions on the reform of the registration procedure and to continue providing information on the number of registrations requested and those recorded. According to the information supplied by the Government in its report, and in the other reports to the Governing Body, from 1 January to 31 October 2017, a total of 61 trade unions were recorded in the public trade union register, while three applications were rejected for failure to observe the statutory time limits. While noting the indication that the Ministry of Labour is making adjustments to the electronic version of the trade union register, the Committee observes that the Government has not provided any new information on the reform of the registration procedure to indicate that account is being taken of the criticism which the trade unions have been expressing for many years and which has given rise to the presentation of a number of complaints examined by the Committee on Freedom of Association. The Committee emphasizes that the trade unions object, inter alia, to excessive delays in the registration process, which facilitate the dismissal of union founder members. ***The Committee expects that the implementation of the tripartite agreement of November 2017 will help to give fresh impetus to the dialogue between the Government and the trade unions to revise and accelerate the trade union registration process. The Committee requests the Government to provide information on all progress made in this respect.***

#### ***Settlement of disputes relating to freedom of association and collective bargaining***

In its previous comment, the Committee asked the Government to evaluate the terms of reference and operation of the Committee for the Settlement of Disputes (Conflict Resolution Committee) relating to freedom of association and collective bargaining (hereinafter Dispute Settlement Committee) with a view to reinforcing the effectiveness and impact of that body. In this regard, the Committee refers to its observation on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### ***Awareness-raising campaign on freedom of association and collective bargaining***

In its previous comments, the Committee underlined the need for wide dissemination in the national mass media of the awareness-raising campaign on freedom of association and collective bargaining prepared in collaboration with the Office as part of the implementation of the roadmap. The Committee notes the Government's indications that: (i) the campaign on freedom of association and collective bargaining continues to be disseminated through the social media networks of government institutions; (ii) interviews were conducted with the labour and social welfare authorities via various government communication media; (iii) an awareness-raising workshop for journalists and opinion-formers and a similar seminar for the communication directors of the three state authorities were held; and (iv) on 31 August and 1 September 2017, campaign posters were inserted in two high-circulation newspapers. The Committee also notes that the CACIF refers to the organization, with support from the Representative of the ILO Director-General in Guatemala, of two awareness-raising activities on sustainable enterprises and fundamental rights at work, one for agriculture and the other for the maquila (export processing) sector. Lastly, the Committee notes that the trade unions in Guatemala, in their report of October 2017 to the Governing Body as part of the follow-up to the article 26 complaint, express regret once again that the awareness-raising campaign is limited to the official media, which have little impact on the general public,

and that at the same time there is an aggressive campaign in leading media outlets against trade union activity and collective bargaining, especially in the public sector. **Observing that the signing of the tripartite agreement in November 2017 and the establishment of the Tripartite National Committee on Labour Relations and Freedom of Association provide a major opportunity in this respect, the Committee urges the Government once again to take the necessary steps, in collaboration with the social partners, to ensure that the awareness-raising campaign on freedom of association and collective bargaining is given real visibility in the national mass media, beyond the official media. The Committee requests the Government to provide information on all progress made in this respect.**

*The maquila sector.* The Committee refers to its observation on the application of Convention No. 98.

**The Committee hopes that the implementation of the tripartite agreement of November 2017 will create the required impetus for the Government, with the participation of the social partners and technical assistance from the Office, to take the necessary steps to remedy the grave violations of the Convention which have been observed by the Committee for many years.**

*[The Committee requests the Government to reply in full to the present comments in 2018.]*

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

The Committee notes, respectively, the observations of the International Trade Union Confederation (ITUC), received in 2015 and on 1 September 2017, the joint observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, received on 30 August 2017, and the observations of the Trade Union's Unity of Guatemala (CUSG), received in 2016. The Committee notes that the various trade union observations refer to matters examined in the present observation, as well as numerous allegations of acts of anti-union discrimination and obstacles to collective bargaining at the municipal level and in various multinational enterprises. **The Committee requests the Government to provide its comments in this regard.**

The Committee also notes the joint observations of the International Organisation of Employers (IOE) and of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), received in 2016 and on 1 September 2017, as well as the observations of the CACIF received in 2015, which refer to matters examined by the Committee in the present observation.

The Committee notes that, within the context of the examination by the Governing Body of the complaint made under article 26 of the ILO Constitution for non-compliance by Guatemala with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the tripartite constituents in the country signed an agreement on 2 November 2017 intended to resolve the matters covered by the complaint that were still to be settled. The Committee notes with *interest* that various aspects of the agreement which provides, among others, for the establishment of a Tripartite Committee on Industrial Relations and Freedom of Association, are relevant for the full application of the Convention.

*Article 1 of the Convention. Adequate protection against anti-union discrimination. Activities of the labour inspection services.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the current legislative reform process in relation to labour inspection results in greater effectiveness and speed in the imposition of dissuasive penalties for acts of anti-union discrimination. The Committee also requested the Government to indicate specifically the number of penalties imposed for anti-union acts and the amount of the fines.

The Committee notes the adoption of Legislative Decree No. 7/2017 (the Legislative Decree) published on 6 April 2017. The Committee notes with *satisfaction* that the Legislative Decree restores the power of the labour inspection services to impose penalties and welcomes the fact that the adoption of the Legislative Decree was preceded by dialogue between employers' organizations and workers' organizations which enabled them to achieve consensus on the content of the reform, which was largely taken up in the Legislative Decree adopted by Congress. **While noting that the content of Legislative Decree is examined in the context of the supervision of the application of the Labour Inspection Convention, 1947 (No. 81), the Committee requests the Government to provide detailed information on the impact of the new Legislative Decree in relation to protection against acts of anti-union discrimination, as required by Article 1 of this Convention. In this regard, the Committee requests the Government to provide specific information on trends in the number of violations detected and penalties imposed by the labour inspection services for violations of trade union rights and the right to collective bargaining. Noting that the new Legislative Decree envisages a series of administrative and judicial remedies before administrative courts and complaint mechanisms which can be used in the event of the imposition of a penalty by the labour inspectorate, the Committee requests the Government to provide information on the duration of procedures before the penalties imposed by the labour inspection services in relation to collective rights become final and the compliance rate with these penalties.**

*Effective judicial proceedings.* In previous comments, the Committee expressed deep concern at the persistent slowness of judicial procedures in relation to anti-union discrimination and the high level of non-compliance with reinstatement orders and it called for the adoption of the necessary measures, including legislative measures, to remedy this situation. The Committee also observes that the absence of adequate judicial protection in cases of anti-union discrimination is one of the elements of the complaint made under article 26 of the ILO Constitution in relation to

Convention No. 87 and that, in the context of the Roadmap adopted in 2013 by the tripartite constituents of the country to resolve the matters raised in the complaint, the Government undertook to address this problem. The Committee notes, first, the statistical data provided by the Government. The Government indicates in particular that, between 1 January and 8 September 2017, a total of 1,721 applications were made for reinstatement in relation to collective disputes (1,589 cases in the public sector and 132 cases in the private sector). During this period, the courts upheld 1,250 cases of reinstatement of which: (i) 92 were given effect; (ii) 83 are pending execution as certain elements have not been resolved; and (iii) 1,075 are still pending decisions on appeal. With reference to cases of non-compliance with final reinstatement orders for members of the trade union movement, the Government provides the statistics supplied by the Special Inspection Unit for Crimes against Trade Unionists for the period between January and August 2017, which indicate that, of the 253 cases notified: (i) 61 cases gave rise to charges by the Inspection Unit; and (ii) three cases gave rise to convictions in court cases, and one to the complaint being set aside. The Committee also notes the information provided by the Government concerning a series of institutional initiatives taken since March 2017 with the support of the representative of the ILO Director-General in Guatemala to improve the efficiency of the labour justice system, including: (i) following a preparatory process, the approval in July 2017 by the Supreme Court of Justice of the internal rules for labour and social welfare tribunals; and (ii) progress in the preparation by the Protection (*Amparo*) and Pre-trial Chamber of the rules on the execution of sentences in relation to labour and social welfare, a draft text which addresses, among other subjects, supervision of compliance with reinstatement orders.

The Committee also notes that, in its report in November 2017, the Committee on Freedom of Association, in view of the multiplication of cases on the lack of judicial protection in cases of anti-union discrimination, requested the Government to take the necessary measures to carry out a revision of the procedural rules of the relevant labour regulations (see Case No. 3062, 383rd Report, paragraph 371). In this regard, the Committee notes the indication by the Government that: (i) the Labour Code has been in force for over 70 years and its procedural part has never been revised, for which reason judicial labour proceedings are antiquated and must be updated to guarantee their expedition and implementation; and (ii) as a consequence, the Protection (*Amparo*) and Pre-trial Chamber of the Supreme Court of Justice has established a working commission to prepare a bill on judicial labour proceedings.

In light of the above, the Committee expresses its **concern** at the persistence of a high number of complaints alleging the excessive slowness of judicial procedures in cases of anti-union discrimination and the high percentage of non-compliance with reinstatement orders. **While welcoming the initiative to adopt a reform of the judicial labour proceedings provided for in the Labour Code, the Committee emphasizes the need for this initiative to include as one of its priorities the adoption of effective judicial procedural rules to ensure that all cases of anti-union discrimination are examined by the courts in a very expeditious manner and that the respective court rulings are implemented rapidly. The Committee urges the Government to take the necessary measures, in prior consultation with the social partners, to reform the procedural rules applicable to all cases of anti-union discrimination as indicated above. The Committee recalls that the Government may request the technical assistance of the Office on this matter and requests it to provide information on any progress in this regard.**

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee expressed concern at the very low number of collective agreements (80 agreements concluded in the country between 2011 and 2014) and at the absence of collective bargaining in the *maquila* (export processing) sector since 2013. The Committee requested the Government to make active use of the campaign to promote freedom of association envisaged in the Roadmap to promote mechanisms for collective bargaining, with special attention to the *maquila* sector. The Committee notes the information provided by the Government on the awareness-raising campaign carried out in relation to freedom of association and collective bargaining, which is examined in the context of Convention No. 87. The Committee also notes the data provided by the Government in October 2017 in the context of the follow-up to the complaint made under article 26 of the ILO Constitution, according to which: between January and September 2017, the Ministry of Labour and Social Welfare approved 13 collective agreements, while another nine agreements are in the process of being approved and another three have to take into account the comments (“*previos*”) of the Ministry.

While recalling that the prior approval of collective agreements are 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 (see the 2012 General Survey on the fundamental Conventions, paragraph 201). The Committee notes with growing **concern** that the number of collective agreements concluded and approved is extremely low (taking specifically into account the fact that, up to now, collective bargaining has been undertaken in the country in a decentralized form at the enterprise level and in public institutions), and that this number is continuing to fall in relation to previous years. **The Committee requests the Government to refer to the new Tripartite Committee on Industrial Relations and Freedom of Association to examine with the social partners the obstacles, both legislative and in practice, to the effective promotion of collective bargaining so that it is able to take measures to promote collective bargaining at all levels.** In this regard, the Committee notes with **interest** that the tripartite agreement identifies, among the objectives of the legislative reform that is to be submitted to the Congress of the Republic, the mechanisms and requirements applicable to sectoral collective bargaining addressing, among other matters, the thresholds applicable to the establishment of sectoral trade unions, the right to collective bargaining and the identification of the most representative organization. **Recalling that the Government may request the technical**

*assistance of the Office in this regard, the Committee requests the Government to provide information on any developments in this regard.*

*Articles 4 and 6. Promotion of collective bargaining in the public sector.* The Committee notes the various trade union observations received in 2015, 2016 and 2017 alleging a series of violations of the right to collective bargaining in the public sector, and specifically that: (i) as from July 2015, there has been an aggressive campaign from the national mass media, supported by employers, against collective agreements in the public sector, described as the cause of the poor quality of public services and the deficit in public finances; (ii) the investigations initiated by the Office of the Prosecutor General (PGN) in February 2016 against 14 collective agreements in the public sector, and the judicial action launched by the PGN in February 2017 with a view to having various clauses of the Collective Agreement on Public Health set aside on the grounds, allegedly, that there was no prior opinion of the Ministry of Finance for the agreement and that it takes over functions that are of the exclusive competence of the State; (iii) the adoption of two circulars in 2015 and 2016 by the President of the Republic prohibiting an increase, by means of collective bargaining, of financial benefits financed through taxation, which would prevent any negotiation of the financial terms in the public administration; and (iv) the obstacles placed in the way of recently concluded collective agreements in the public sector by the Ministry of Labour and Social Welfare, by denying them approval for reasons not set out in the legislation.

The Committee also notes in this respect the joint observations of the IOE and the CACIF of 2016, indicating that: (i) in October 2015, the CACIF requested the PGN to revise the clauses of the collective agreement on public health contrary to the law and those of an excessive nature; (ii) this request comes as a result of the dissemination by the communication media, as from the end of 2014, of the excesses referred to; and (iii) employers recognize that collective agreements are legal instruments and, with the exception referred to above, have never called for the revision or setting aside of collective agreements concluded by the State.

The Committee notes that the Government's report does not contain specific information on the issues arising in relation to collective bargaining in the public sector, despite the fact that these issues were raised in several observations by trade unions in previous years. The Committee wishes to recall firstly in general terms that the Convention recognizes the right to collective bargaining of workers in public enterprises and public servants not engaged in the administration of the State. The Committee also recalls that Guatemala has ratified the Collective Bargaining Convention, 1981 (No. 154), an instrument which extends the right to collective bargaining to the public administration as a whole, while recognizing that the exercise of this right may give rise to special modalities of application in that sector.

With regard to the allegations of obstacles to the approval of collective agreements in the public sector by the Ministry of Labour and Social Welfare, the Committee recalls once again that it considers in general that, to safeguard the principle of free and voluntary collective bargaining, procedures for the approval of collective agreements by the public authorities are only compatible with the Convention when they are confined to stipulating that approval may only be refused if the agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. With reference to the public sector, the Committee recalls that it also considers that the specific characteristics of the public administration require a certain level of flexibility, and that in this respect the Convention could be compatible with systems requiring parliamentary approval for certain labour conditions or financial clauses of collective agreements in the public sector, and that in any case the requirement of a financial opinion by the competent authorities prior to the conclusion of an agreement is acceptable. The Committee understands that the requirement for such an opinion exists in Guatemalan legislation. ***The Committee therefore requests the Government to take the necessary measures to facilitate the process of the approval of collective agreements legally conducted in the public sector by the Ministry of Labour and Social Welfare and to ensure that any refusal to approve a collective agreement is confined to situations in which it has a procedural flaw or does not conform to the minimum standards laid down by the general labour legislation, or the prior financial opinions required by the legislation have not been issued. The Committee also requests the Government to provide information on the consequences of the absence of approval and on the remedies that exist to appeal against such a decision, and to provide its responses to the various specific cases of absence of approval referred to by the trade unions in their observations.***

With reference to the allegation by the trade unions of the prohibition of wage bargaining in the public sector through Presidential circulars, the Committee recalls that, while it is fully aware of the serious financial and budgetary difficulties faced by governments, it considers that the authorities should give preference as far as possible to collective bargaining in determining the terms and conditions of employment of public servants. The Committee 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 (see the 2012 General Survey, op. cit., paragraph 220). ***The Committee requests the Government to provide its comments on the respective trade union observations and to ensure compliance with the criteria set out above with a view to taking into account both the duty of the State to ensure the balance of public budgets and the right, recognized by Conventions Nos 98 and 154, of workers in the public section to collectively negotiate their remuneration.***

With regard to the allegation by the trade unions concerning the judicial action initiated by the PGN against the various public sector collective agreements, the Committee recalls that it 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 (such as non-discrimination), the judicial authority could nullify these provisions so as to ensure respect of higher standards (see the 2012 General Survey, op. cit., paragraph 207). ***The Committee requests the Government to provide its comments on the respective trade union observations and to make every effort to promote the negotiated and consensual settlement of any disputes which may arise in relation to the allegedly excessive nature of certain clauses of collective agreements in the public sector.***

***Noting finally that in various cases relating to collective bargaining in the public sector brought before the Committee on Freedom of Association, a significant portion of causes of disputes is due to the absence of regulations, the Committee requests the Government to take, in consultation with the trade unions concerned the necessary measures to place collective bargaining procedures in the public sector in a clear normative framework which ensure that the requirements of financial sustainability and the principles of bargaining in good faith are both taken into account. The Committee reminds the Government that it may request the technical assistance of the Office in this respect and requests it to provide information on any developments in this regard.***

***Application of the Convention in practice. Dispute Resolution Commission.*** In its previous comment on the present Convention, the Committee welcomed the establishment of the Commission for the Resolution of Disputes relating to Freedom of Association and Collective Bargaining (hereinafter, the Dispute Resolution Commission). The Committee also recalls that in its observation in 2016 on Convention No. 87, it requested the Government to undertake an evaluation of the terms of reference and operation of Dispute Resolution Commission and to include in the evaluation an examination of the complementarity between the Dispute Resolution Commission and the judicial mechanisms in the country for the protection of freedom of association. The Committee notes: (i) the information provided by the Government on the evaluation of the Dispute Resolution Commission carried out by an independent consultant with the support of the representative of the ILO Director-General in Guatemala; (ii) the indication by the trade unions that the outcomes of the Dispute Resolution Commission have been very poor and that it is necessary to review its terms of reference; and (iii) the indication by the CACIF that most of the sessions of the Dispute Resolution Commission have not been held for lack of quorum. The Committee notes with ***interest*** that the tripartite agreement signed on 2 November 2017 provides that the new Tripartite Committee on Industrial Relations and Freedom of Association will integrate the functions of the Dispute Resolution Commission. ***Noting that the number of allegations of anti-union discrimination and obstacles to collective bargaining made to the ILO continues to be very high, the Committee expects that the creation of the new Tripartite Commission will allow for the establishment of flexible and effective mechanisms to contribute, along with the action of the labour inspectorate and the labour courts, to the resolution of such disputes. The Committee reminds the Government that it may continue to benefit from the technical assistance of the Office and requests it to provide information on the contribution made by the new Tripartite Commission to the resolution of disputes in relation to trade union rights.***

***The maquila sector.*** In its previous comments on the present Convention and on Convention No. 87, the Committee requested the Government to take specific measures to promote and guarantee full compliance with trade union rights in the *maquila* sector and to indicate the number of active trade unions and worker members of those unions in the sector, as well as the number of collective agreements in force. The Committee notes that the Government: (i) reports the holding of a meeting and three bipartite training activities on labour rights in general; and (ii) refers to the implementation in future of a training programme that will include, among other subjects, freedom of association and collective bargaining in the textile and *maquila* sectors. The Committee notes the observations of the CACIF indicating that, following the registration of two trade unions in November 2016 and January 2017, there are now three unions in the *maquila* sector with a total of 260 members. The Committee also notes that the 13 collective agreements approved at the national level in 2017 include one relating to a *maquila* enterprise.

The Committee notes with ***concern*** that the unionization rate in the sector is extremely low and that the approval of only one collective agreement covering a *maquila* enterprise is known in recent years. ***The Committee requests the Government, within the framework of the new Tripartite Committee on Industrial Relations and Freedom of Association to examine with the social partners the obstacles to the exercise of trade union rights and collective bargaining in the maquila sector and to intensify initiatives for the effective promotion of these rights in the sector. The Committee requests the Government to provide information on any developments in this regard.***

***Application of the Convention in municipal authorities.*** In its previous comment, the Committee noted with concern the large number of complaints of violations of the Convention at the municipal level and requested the Government to take the necessary measures to ensure the application of the Convention in municipal authorities. The Committee notes the Government’s indication that the Ministry of Labour and Social Welfare has undertaken an awareness-raising process on labour disputes for municipal authorities, starting with a first workshop organized by the Deputy Minister of Labour Administration at the headquarters of the National Association of Municipal Authorities in

September 2016. The Committee also notes with *concern* that the observations of trade unions received in 2017 complain of the persistent violation of *Articles 1 and 4* of the Convention in a series of municipal authorities and that various cases that are before the Committee on Freedom of Association refer to violations of trade union rights in municipalities. ***Emphasizing that the awareness-raising activities of the Ministry of Labour and Social Welfare may support, but cannot replace the intervention of the public authorities, which are responsible for ensuring that municipal authorities comply with the rule of law, the Committee urges the Government to take all the necessary measures to ensure compliance with the Convention in municipalities. The Committee requests the Government to provide information on any developments in this regard.***

***The Committee expects that the implementation of the tripartite agreement of November 2017 will provide the necessary stimulus for the adoption of the measures it has been requesting for many years, and invites the Government to provide information on any progress achieved.***

*[The Government is asked to reply in full to the present comments in 2019.]*

## Guinea

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, and of the National Employers' Council of Guinea, transmitted with the Government's report, which cover matters examined by the Committee.

*Article 3 of the Convention. Right of organizations to organize their activities and to formulate their programmes.* In its previous comments, the Committee requested the Government to provide information on the determination of minimum services in the context of collective disputes through the framework for concerted social dialogue, and particularly to indicate the minimum services determined in the transport and communications services, where difficulties had previously been reported. The Committee notes with *interest* the Government's indication that, following the development of the National Social Dialogue Charter, Decree No. 256 of 23 August 2016 establishing a National Social Dialogue Council was adopted. The Committee notes that, in accordance with section 4 of the Decree, the Council is responsible for ensuring permanent dialogue between the State and all the social partners, and that section 5(2) provides that the Council shall be consulted on major disputes. The Committee further notes that section 7 of the Decree provides for the tripartite composition of the Council and the appointment of its members. The Government adds that it will take every measure for its effective implementation, including the appointment of its members. The Committee notes the indication by the National Employers' Council of Guinea, suggesting that the Council could also address, in addition to the transport and telecommunications sectors, services such as banking and insurance, health, education and microfinance. ***The Committee requests the Government to provide information on the work of the National Employers' Council of Guinea in resolving disagreements concerning the determination of minimum wages. The Committee once again requests the Government to indicate the minimum services determined in the transport and communications services, where difficulties had previously been reported, including by the ITUC in its observations referred to above.***

The Committee recalls that in its previous comment it noted that, under the terms of section 431(5) of the Labour Code, employees are entitled to cease working completely, on condition that indispensable security measures and a minimum service are ensured. In this regard, the Committee previously requested the Government to take the necessary measures to amend section 431(5) of the Labour Code in order to limit the possibility to establish a minimum service to the following situations: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (that is, 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 acute crisis threatening the normal conditions of existence of the population; or (iii) in public services of fundamental importance (see the 2012 General Survey on the fundamental Conventions, paragraph 136). The Committee also noted that, under the terms of sections 433(1) and 434(4) of the Labour Code, read in conjunction, recourse to arbitration may be compulsory in a dispute of such a nature as to compromise the normal functioning of the national economy. In this regard, the Committee recalled that compulsory recourse to arbitration to bring an end to a collective labour dispute or a strike is only acceptable in cases where strikes may be subject to restrictions, or even prohibited, namely: (i) in the case of disputes concerning public servants exercising authority in the name of the State; (ii) in disputes in essential services in the strict sense of the term; or (iii) 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 (see General Survey, op. cit., paragraph 153). The Committee also noted the possibility envisaged in section 434(4) of the Labour Code to make executory an arbitration award despite the expressed opposition of one of the parties within the time limits set out in the law, which amounts to empowering the public authorities to bring an end to a strike, instead of the highest judicial authorities. The Committee therefore requested the Government to take the necessary measures to amend section 434(4) of the Labour Code as indicated above. The Committee notes the Government's indication that it has established a commission to review the Labour Code, with a view to its revision, and that sections 431(5) and 434(4) will be analysed and discussed by this commission. ***The Committee welcomes the establishment of the commission to review the Labour Code and hopes that sections 431(5)***

and 434(4) of the Labour Code will be amended in the near future. The Committee requests the Government to report any progress achieved in this regard.

## Guinea-Bissau

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1977)

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2011. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) referring to wage bargaining under the National Tripartite Council for Social Consultation and to the inadequate provisions in the General Labour Act regarding protection against anti-union discrimination. The Committee also notes the comments of 30 August 2011 by the National Workers Union of Guinea (UNTG-CS) referring to the need to strengthen the capacity of the general labour inspectorate and the courts to enforce the labour legislation. *The Committee requests the Government to send its observations thereon.*

*Articles 4 and 6 of the Convention. Scope of the Convention. Agricultural workers and dockworkers.* The Committee noted previously the Government's intention to pursue revision of the General Labour Act, Title XI of which contains provisions on collective bargaining and the adoption of measures to guarantee agricultural workers and dockworkers the rights laid down in the Convention. The Committee notes that, in its report, the Government states that the revision of the legislation is still in process. The Committee noted previously the Government's statement that the draft Labour Code provided for adaptation of the application of its provisions to the specific characteristics of the work performed by agricultural workers and dockworkers. *The Committee requests the Government to provide information on the status of the draft legislation and trusts that it will guarantee for agricultural workers and dockworkers the rights laid down in the Convention.*

The Committee notes that the Government states that there is no specific legislation on this subject, which is dealt with in bodies created for the purpose such as the Standing Committee on Social Consultation. The Committee reminds the Government that it requested information on measures taken to adopt the special legislation which, under section 2(2) of Act No. 8/41 on freedom of association, was to regulate the right to collective bargaining of public servants who are not engaged in the administration of the State. *The Committee once again requests the Government to send information on this matter.*

The Committee requested the Government to provide information on any developments regarding the promotion of collective bargaining in the public and private sectors (training and information activities, seminars with the social partners, etc.), and to provide statistics on the collective agreements concluded (by sector) and the number of workers they cover. The Committee noted that the ITUC's comments show that the collective bargaining situation is not satisfactory. It again reminds the Government that *Article 4* of the Convention provides that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreement". *The Committee requests the Government to take specific measures to promote greater use in practice of collective bargaining in the private and public sectors, and to report any developments in the situation, indicating the number of new agreements concluded and the number of workers covered. The Committee hopes that the Government's next report will contain full information on the matters raised and on the ITUC's comments.*

*The Committee reminds the Government that it may seek technical assistance from the Office should it so wish.*

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

## Guyana

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1966)

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2009. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

In its previous observation, the Committee referred to the recognition of only those unions claiming 40 per cent support of the workers, as set out in the Trade Union Recognition Act. The Committee takes note of the Government's statement that, at the request of the Trades Union Congress, the Trade Union Recognition Act provided for the recognition of unions that were recognized prior to the Act without having to prove that they had majority support (section 32). All unions benefited from this provision which the Government says is no longer applicable as all certificates applicable under this section have been issued. Given that the representativeness of unions might change, the Committee recalls once again that, if no union covers more than 40 per cent of the workers in the bargaining unit, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). *The Committee hopes that significant progress respecting this issue will be made in the near future and requests the Government to provide information on the results of the consultative process.*

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

## Haiti

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1979)**

The Committee notes with *deep concern* that the Government's report has not been received. In this regard, it also notes that the Government was requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference in view of the failure to provide reports and information on the application of ratified Conventions.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) and the International Trade Union Confederation (ITUC), received on 30 August and 1 September 2017, respectively, which relate to the application of the principles of freedom of association in practice. *The Committee requests the Government to provide its comments in this respect.*

The Committee recalls that for many years it has been requesting the Government to amend the national legislation, and particularly the Labour Code, to bring it into conformity with the provisions of the Convention. The Committee recalls that its comments principally concerned:

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their choosing:*

- the need to amend sections 229 and 233 of the Labour Code in order to ensure that minors who have reached the statutory minimum age for admission to employment are allowed to exercise their trade union rights without parental authorization;
- the need to amend section 239 of the Labour Code so as to allow foreign workers to serve as trade union officials, at least after a reasonable period of residence in the country;
- the need to guarantee for domestic workers the rights laid down in the Convention (section 257 of the Labour Code provides that domestic work is not governed by the Labour Code, and the Act adopted by Parliament in 2009 to amend this provision – the Act has not yet been adopted, but the Government referred to it in its previous reports – also does not recognize the trade union rights of domestic workers).

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes:*

- the need to revise the provisions of the Labour Code on compulsory arbitration in order to ensure that recourse to the latter is only possible to bring an end to a collective labour dispute or a strike in certain circumstances, namely: (1) when the two parties to the dispute so agree; or (2) when a strike may be restricted or prohibited, namely: (a) in the context of disputes involving officials who exercise authority in the name of the State; (b) in disputes in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to meet the requirements of the situation.

*The Committee expects that with the technical assistance that it is receiving, particularly in view of the resumption of tripartite dialogue for the reform of the Labour Code, the Government will be in a position in its next report to indicate that progress has been achieved in the revision of the national legislation to bring it into full conformity with the Convention.*

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

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

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

The Committee notes with *concern* that the Government's report has not been received. It also notes that the Government was requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference due to the failure to provide reports and information on the application of ratified Conventions.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017, concerning allegations of grave violations of freedom of association in both the public and the private sectors, and particularly in several enterprises in textile export processing zones, where some 200 unionized workers and trade union leaders have been dismissed following a strike called in May 2017 in support of an increase in the minimum wage. The Committee notes in this respect the campaign launched in July 2017 by the International Trade Union Confederation (ITUC) and the Trade Union Confederation of the Americas (TUCA) denouncing violations of freedom of association. The Committee expresses *deep concern* at this information. It notes that these issues are being followed-up by the Better Work programme, a partnership between the ILO and the International Finance Corporation (IFC), a member of the World Bank Group, which has been present in Haiti since 2009. *Recalling that acts of harassment and intimidation carried out against workers or their dismissal by reason of trade union membership or legitimate trade union activities*

*is a serious violation of the principles of freedom of association enshrined in the Convention, the Committee expects that the Government will take the necessary measures to ensure respect for these principles and requests it to provide information on any investigations ordered by the Ministry of Social Affairs and Labour (MAST), and any judicial procedures in this regard.*

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* The Committee recalls that its previous comments concerned the need to adopt a specific provision establishing protection against anti-union discrimination in recruitment practices, and the need to adopt provisions generally affording adequate protection to workers against acts of anti-union discrimination (on the basis of trade union membership or activities) during employment, accompanied by effective and rapid procedures and sufficiently dissuasive sanctions. In this regard, the Committee recalls that, in accordance with section 251 of the Labour Code, “any employer who, in order to prevent an employee from joining a trade union, organizing a trade union or exercising his or her rights as a trade union member, dismisses, suspends or demotes the employee or reduces his or her wages, shall be liable to a fine of 1,000 to 3,000 Haitian gourdes (approximately US\$15–45) to be imposed by the labour tribunal, without prejudice to any compensation to which the employee concerned shall be entitled”. ***The Committee requests the Government to ensure that, in the context of the renewal of tripartite dialogue for the reform of the Labour Code, the penalties provided for in the event of anti-union discrimination during employment are increased substantially in order to ensure that they are sufficiently dissuasive. It also requests the Government to ensure the adoption of a specific provision establishing protection against anti-union discrimination at the time of recruitment.***

*Article 4. Promotion of collective bargaining.* The Committee once again recalls the need to amend section 34 of the Decree of 4 November 1983, particularly in relation to its provisions empowering the Labour Organizations Branch of the Labour Directorate of the MAST “to intervene in the drafting of collective agreements and in collective labour disputes with regard to all matters relating to freedom of association”. ***The Committee expects that the Government will draw on the technical assistance provided by the Office to amend section 34 of the Decree of 4 November 1983 in order to ensure that the Labour Organizations Branch can only intervene in collective bargaining at the request of the parties.***

*Right to collective bargaining of public servants not engaged in the administration of the State and public employees.* ***The Committee requests the Government to provide information on the legislative provisions relating to this subject.***

*Right to collective bargaining in practice.* In its previous comments, the Committee noted that, following the tripartite training course organized by the Office in 2012 in Port-au-Prince for the interested parties in the textile sector, the participants emphasized the need to establish a permanent forum for bipartite dialogue in order to strengthen dialogue between the actors in the sector. ***The Committee requests the Government to provide information on this subject, including in light of the most recent events in the textile sector in May 2017.*** The Committee notes with *concern* that, according to the CTSP, there are only four collective agreements in force in the country and some of them are not signed by the lawful representatives of workers. ***The Committee requests the Government to provide its comments on this subject and to supply information on the measures adopted or envisaged to promote collective bargaining in the country.***

***The Committee expects the Government to make every effort to take the necessary measures in the near future. [The Government is asked to reply in full to the present comments in 2018.]***

## Honduras

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

The Committee notes the observations of the General Confederation of Workers (CGT) and the Confederation of Workers of Honduras (CTH) transmitted with the Government’s report, which deal with issues examined by the Committee in this observation. It also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, which relate to issues examined by the Committee in this observation and contain, in particular, new allegations of anti-union murders and violence, as well as the Government’s comments thereon. The Committee also notes the observations of the Honduran National Business Council (COHEP), received on 22 August 2017, on issues examined by the Committee in this observation, as well as the Government’s reply thereon.

*Trade union rights and civil liberties.* In its previous comments, the Committee expressed deep concern at the large number of anti-union crimes, including murders and death threats, committed between 2010 and 2014. It asked the Government to provide information on the status of the relevant investigations and criminal proceedings. In this respect, the Committee notes the Government’s indication that: (i) the murders of Ms Sonia Landaverde Miranda and Messrs Alfredo Misael Ávila Castellanos and Evelio Posadas Velásquez are under investigation; (ii) the criminal proceedings regarding the murder of Juana Suyapa Bustillo are in the evidence-gathering phase; and (iii) the public prosecutor requested the competent authorities on 6 May 2014 to issue an arrest warrant for the person suspected of murdering Ms Alma Yaneth Díaz Ortega and Ms Uva Erlinda Castellanos Vigil. ***The Committee urges the Government***

*to provide information on the outcome of the investigations in the abovementioned cases of murder, as well as on any judgment handed down in the case of murder of Alma Yaneth Díaz Ortega and Uva Erlinda Castellanos Vigil.*

The Committee notes with **concern** that the Government has not provided any information on either the investigations carried out or the judgments handed down in relation to the murders of trade unionists Messrs Maribel Sánchez, Fredis Omar Rodríguez and Claudia Larissa Brizuela, all of which occurred between 2010 and 2014. **The Committee urges the Government to provide this information as soon as possible.**

With regard to the death of four teachers reported by Education International (EI) in 2014, the Committee notes the Government's indication that: (i) in the case of Mr Roger Abraham Vallejo, the investigation is ongoing; (ii) there is no new information regarding the case of Martín Florencio and Félix Murillo López; and (iii) in the case of Ilse Ivania Velásquez Rodríguez (examined by the Committee on Freedom of Association in the context of Case No. 3032), her death was accidental and a person has been convicted of manslaughter. With respect to the threats reported by Mr Víctor Crespo, the Government reports that it has not been able to verify the alleged crime. In relation to the death of Mr Manuel Crespo, father of Mr Víctor Crespo, the Government indicates that it is a case of manslaughter and that it has been established that there is no link to the alleged threats. The Committee also notes the Government's indication that the Public Prosecutor's Office has not received any complaints or opened any cases relating to the death threats against the leaders of the Trade Union Association of Dockworkers (SGTM), referred to in the 2014 observations of the ITUC. The Committee notes the information provided by the Government and is forwarding the information relating to the death of Ilse Ivania Velásquez Rodríguez to the Committee on Freedom of Association. **It urges the Government to provide information on the outcome of the investigations in the cases of murder of Roger Abraham Vallejo, Martín Florencio and Félix Murillo López.**

The Committee notes with **regret** the new allegations made by the ITUC, indicating that Messrs José Ángel Flores and Silmer Dionisios George, the President and a member, respectively, of the Unified Campesino Movement (MUCA), affiliated with the CUTH, were murdered on 18 October 2016. The Committee notes that the ITUC adds that both persons were under police protection and that the Inter-American Commission on Human Rights (IACHR) had granted protection measures to José Ángel Flores in May 2014. The Committee notes that the ITUC also reports: (i) the kidnapping, on 15 April 2017, of Mr Moisés Sánchez, a leader of the Union of Agro-Food and Allied Industry Workers; (ii) death threats, made in 2016, against Mr Miguel López, a trade union leader in the public electricity enterprise; and (iii) in 2016 and early 2017, death threats against Mr Nelson Núñez and Ms Patricia Riera, trade union leaders in a multinational enterprise in the agro-industrial sector. The Committee notes the Government's reply indicating that two persons have been charged with the murders of Messrs José Ángel Flores and Silmer Dionisios George and that the complaint concerning Mr Moisés Sánchez and his brother, Mr Hermes Misael Sánchez, has been forwarded to the body responsible for police investigations. The Committee **deeply deplures** the allegations of new murders, kidnappings and death threats against members of the trade union movement. **The Committee requests the Government to provide, without delay, detailed information on the cases of Messrs Miguel López, Nelson Núñez and Ms Patricia Riera. The Committee also requests the Government to continue providing information on any new developments in relation to the cases of Messrs José Ángel Flores, Silmer Dionisios George, Moisés Sánchez and Hermes Misael Sánchez.** The Committee notes that the United Nations Human Rights Committee, in its concluding observations on Honduras adopted on 24 July 2017 (see CCPR/C/SR.3378 and 3379), expressed its extreme concern at the acts of violence committed against, inter alia, the country's trade unionists in a context of impunity. The Committee expresses its **deep concern** at these crimes and is bound once again to draw the Government's attention to the principle that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure and threats, in which human rights are fully respected, and that it is the responsibility of the Government to ensure that these principles are respected. **Recalling that the absence of convictions against those guilty of crimes against trade union officers and members creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights, the Committee firmly urges the Government to take without delay all the necessary measures to ensure that the investigations into the murders are carried out promptly in order to determine the persons responsible and to punish those guilty of these crimes. Moreover, the Committee firmly urges the Government to take the necessary measures to provide prompt and effective protection to all trade union leaders and members who are at risk and therefore to increase all the necessary material and human resources to ensure that the lives and physical integrity of persons are effectively guaranteed and to prevent further cases of trade union murders and violence. The Committee requests the Government to provide information on all the measures taken in this respect.**

*Articles 2 et seq. of the Convention relating to the establishment, autonomy and activities of trade unions.* The Committee recalls that it has been emphasizing for many years the need to amend certain sections of the Labour Code to bring them into conformity with the Convention, namely:

- (a) the exclusion from the rights and guarantees of the Convention of workers in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));
- (b) the prohibition of more than one trade union in a single enterprise (section 472);
- (c) the requirement of more than 30 workers to establish a trade union (section 475);

- (d) the requirement that the officers of a trade union must be of Honduran nationality (sections 510(a) and 541(a)), be engaged in the corresponding activity (sections 510(c) and 541(c)) and be able to read and write (sections 510(d) and 541(d));
- (e) the prohibition on strikes called by federations and confederations (section 537);
- (f) the requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (sections 495 and 563);
- (g) the authority of the competent ministry to end disputes in oil industry services (section 555(2));
- (h) government authorization or a six-month period of notice for any suspension of work in public services that do not depend directly or indirectly on the State (section 558); and
- (i) the referral to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services that are not essential in the strict sense of the term (sections 554(2) and (7), 820 and 826).

In its previous comments, the Committee welcomed: (i) the preparation by the technical commission of the Ministry of Labour and Social Security of a draft reform of 13 sections of the Labour Code, prepared with ILO support, to bring the Labour Code into conformity with the Convention; and (ii) the submission of this draft to the Economic and Social Council (CES) for discussion and approval. It also noted the roadmap prepared by the Council in 2014, which envisaged the submission and adoption, in September of that year, of the draft reform by the National Congress. Lastly, the Committee expressed the hope that the Government would promptly submit the draft reform to the National Congress so as to bring the national legislation fully into conformity with the Convention.

The Committee notes that COHEP indicates that employers and workers have not been invited to a tripartite discussion in the CES or in any other forum. The Committee also notes the Government's reply to the observations of COHEP indicating that, while it recognizes that further progress has not been made since the draft reform was submitted to the CES in May 2014, in a communication dated April 2014, the CGT, CUTH and CTH expressed their reservations about the legislature examining possible reforms to the Labour Code, based on previous experiences and out of fear that such reforms would significantly prejudice labour rights in favour of big business. The Committee notes with *regret* that the progress made in 2014 has not been given effect in practice in relation to the discussion and adoption of a draft reform to bring the Labour Code into conformity with the Convention. ***The Committee therefore once again requests the Government to take all the necessary measures, after consulting the representative employers' and workers' organizations, to submit as soon as possible to the National Congress a bill that takes into account the various comments made by the Committee for many years. The Committee firmly hopes that it will be able to observe tangible progress in the very near future.***

*Application of the Convention in practice.* The Committee takes due note of the Government's indication that legal personalities of 23 trade unions were recognized between 2014 and 2016. ***The Committee requests the Government to continue providing information on new registrations of trade unions.***

***[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]***

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

The Committee notes the observations of the General Confederation of Workers (CGT), and the Confederation of Workers of Honduras (CTH), transmitted with the Government's report, which deal with issues examined by the Committee in this observation. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, which also relate to issues examined by the Committee in this observation, as well as the Government's comments thereon. The Committee further notes the observations of the Honduran National Business Council (COHEP), received on 22 August 2017, on issues examined by the Committee in this observation, as well as the respective comments made by the Government.

The Committee notes the Government's comments on the observations of the CGT and CTH relating to problems in the collective industrial relations in the education sector, issues that are being examined by the Committee on Freedom of Association in the framework of Case No. 3032.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee referred to the lack of adequate protection against acts of anti-union discrimination, as the fines established in section 469 of the Labour Code are merely symbolic. The Committee notes that the Government reports the adoption of a new Inspection Act, published on 15 March 2017 (Legislative Decree No. 178-2016). The Committee notes with *interest* that section 90 of the Act imposes fines of 300,000 Honduran lempiras (HNL) (equivalent to US\$12,884.84) for any type of acts that prejudices freedom of association and that, according to COHEP, the entry into force of the Act resulted in the repeal of section 469 of the Labour Code. Moreover, the Committee notes that the Act establishes a fine of HNL250,000 for any hindrance of labour inspection. ***The Committee requests the Government to provide information on the application and impact in practice of the fines for anti-union acts established in the new Inspection Act.***

The Committee also notes the approval of Agreement No. STSS-196-2015 establishing a mandatory nationwide administrative procedure to protect workers intending to establish a trade union and that the protection provided by this procedure begins as soon as the establishment of the trade union is notified and ends when the notice of legal personality is received. Furthermore, the Committee notes that the Decision establishes guidelines to improve guidance services and inspections in relation to freedom of association and collective bargaining. The Committee also notes that the Decision provides that the General Labour Directorate shall notify the labour inspectorate whenever it is informed of the conclusion of a collective accord on conditions of employment so as to ensure that the inspectorate carries out an investigation to identify possible violations of freedom of association. ***While noting these initiatives with interest, the Committee requests the Government to provide information on their application in practice and to examine, with the social partners, the possibility of incorporating into the Labour Code the content of Agreement No. STSS-196-2015.***

***Article 2. Adequate protection against acts of interference.*** The Committee recalls that, for many years, it has been indicating the need for the legislation to explicitly prohibit all the acts of interference covered by *Article 2* of the Convention and to also establish remedies and sufficiently dissuasive penalties for such acts, as the general provisions contained in section 511 of the Labour Code are insufficient. While noting the Government's indication that the new Inspection Act implicitly gives effect to the Convention, the Committee notes that the Act itself does not contain explicit provisions against acts of interference. ***The Committee is therefore bound to once again request the Government, after consultation with the social partners, to take the necessary measures to incorporate into the legislation explicit provisions that ensure effective protection against acts of interference by the employer, in accordance with Article 2 of the Convention. The Committee requests the Government to take due note of this issue in the process of reforming the Labour Code referred to in the Committee's observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to report any progress in this regard.***

***Articles 4 and 6. Promotion of collective bargaining. Right of collective bargaining of public servants not engaged in the administration of the State.*** In its previous comments, the Committee, having noted that sections 534 and 536 of the Labour Code provide that unions of public employees may not submit lists of claims or sign collective agreements, recalled that, although *Article 6* of the Convention excludes public servants engaged in the administration of the State (such as public servants in ministries and other comparable government bodies and their auxiliaries) from the scope of application of the Convention, other categories of public servants and public employees (for example, employees of public enterprises, municipal services and decentralized entities, public sector teachers and personnel in the transport sector) should enjoy the guarantees laid down in the Convention and therefore be able to bargain collectively their terms and conditions of employment, and in particular their wages.

The Committee notes the Government's indication that collective bargaining by trade unions in the public sector, specifically those in the government sector, is limited, and that the same applies to the army and police forces. The Committee nevertheless notes the Government's indication that, various decentralized and centralized institutions (the Ministry of Health, Finance, the National Children's Institution, the Energy Enterprise of Honduras, the Secretariat of State for Infrastructure and Public Services, Hondutel and the National Autonomous Water and Sewerage Service) are permitted to submit claims and engage in collective bargaining. The Committee also notes that on 23 June 2016, a memorandum of understanding was signed setting the ordinary wage in the civil service at HNL1,800. ***While noting the information provided, the Committee requests the Government to specify the texts that recognize the right to workers to collective bargaining in these institutions, and how they are related to sections 534 and 536 of the Labour Code. While welcoming the signing of the memorandum of understanding referred to by the Government, the Committee also requests the Government to provide comprehensive information on the agreements concluded in the public sector.***

***Application of the Convention in practice. Export processing zones.*** The Committee notes that the Government, in response to its previous request, indicates that ten inspections have been carried out in export processing zones. ***The Committee requests the Government to provide information on the findings of the inspections in relation to freedom of association and to provide full information on the number of complaints of violations of trade union rights in export processing zones.***

***Anti-union discrimination.*** The Committee notes that the 2017 observations of the ITUC contain numerous reports of acts of anti-union discrimination in various sectors of the economy, including dismissals of trade union leaders and the creation of black lists. ***While taking note of the Government's comments with regard to the actions taken by the competent authorities, the Committee expresses the hope that the entry into force of the new Inspection Act will ensure effective protection against such acts and will prevent their repetition.***

***Allegations of acts of corruption in the labour inspectorate in relation to trade union rights.*** In its previous comments, the Committee asked the Government to provide information on alleged cases of corruption in the labour inspectorate in relation to the exercise of trade union rights. The Committee notes the Government's indication that there has been a significant decrease in the number of cases of corruption in which labour inspectors have provided information to third parties on the establishment of trade unions, and that various inspectors have been subjected to disciplinary measures, including dismissal. The Government adds that section 12 of the new Inspection Act establishes a series of principles and obligations governing the action of labour inspectors, and that a technical audit on inspection has been established and has been given the means to ensure technical independence, objectivity and impartiality in the verification of the work of inspectors and for receiving complaints. The Committee takes due note of this information and hopes that

the action of the technical audit on labour inspection will make it possible to ensure the complete integrity of inspections. ***The Committee requests the Government to report the results of the work by the technical audit in its next report on the application of the Labour Inspection Convention, 1947 (No. 81).***

***Collective bargaining in practice.*** The Committee notes that the Government provides information on the registration of three collective labour accords in export processing zones between 2016 and 2017. ***The Committee requests the Government to provide information on the measures taken, in conformity with Article 4 of the Convention, to promote collective bargaining, and to continue providing information on the number of collective agreements concluded and in force in the country, indicating the sectors concerned and the number of workers covered.***

## Hungary

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

The Committee notes the observations received on 1 September 2017 from the International Trade Union Confederation (ITUC), which are reflected in the present observation. It also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which relate to issues under examination by the Committee and contain allegations that Act XLII of 2015 resulted in trade unions formerly established in the area of civilian national security not being able to operate properly. ***The Committee requests the Government to provide its comments in this respect.***

***Freedom of expression.*** In its previous comments, the Committee had noted with concern that sections 8 and 9 of the 2012 Labour Code prohibit workers from engaging in any conduct, including the exercise of their right to express an opinion – whether during or outside working time – that may jeopardize the employer's reputation or legitimate economic and organizational interests, and explicitly provide for the possibility to restrict workers' personal rights in this regard. The Committee had requested the Government to provide detailed information on the results of the "For Employment" project, under which an assessment of the impact of the Labour Code on employers and workers had been undertaken, as well as on the outcome of the consultations on the modification of the Labour Code within the framework of the Permanent Consultation Forum of the Market Sector and the Government (VKF). The Committee had expressed the hope that the review of the Labour Code would fully take into account its comments with respect to the need to take any necessary measures to ensure respect for freedom of expression. The Committee notes that the Government confines itself to indicating that the negotiations in question have not been closed yet. The Committee ***regrets*** that no information has been provided by the Government on the outcome of the "For Employment" project (completed in August 2015) or on the consultations undertaken since 2015 within the framework of the VKF with a view to elaborating consensus-based proposals for the review of the Labour Code. ***The Committee highlights once again the need to take all necessary, including legislative, measures to guarantee that sections 8 and 9 of the Labour Code do not impede the freedom of expression of workers and the exercise of the mandate of trade unions and their leaders to defend the occupational interests of their members, and expects that its comments will be fully taken into account in the framework of the ongoing review of the Labour Code. It requests the Government to provide information on any progress achieved in this respect.***

***Article 2 of the Convention. Registration of trade unions.*** In its previous comments, the Committee had noted the allegation of the workers' group of the National ILO Council that numerous rules in the new Civil Code concerning the establishment of trade unions (for example, on trade union headquarters and the verification of its legal usage) obstructed their registration in practice. The Committee had requested the Government to: (i) assess without delay, in consultation with the social partners, the need to simplify the registration requirements, including those relating to union headquarters, as well as the ensuing obligation to bring the trade union by-laws into line with the Civil Code on or before 15 March 2016; and (ii) take the necessary steps to effectively address the difficulties signalled with respect to registration in practice, so as not to hinder the right of workers to establish organizations of their own choosing. The Committee had also requested the Government to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.

The Committee notes the Government's indication that Act CLXXIX of 2016 on the amendment and acceleration of proceedings regarding the registration of civil society organizations and companies, which entered into force on 1 January 2017, amended the 2011 Association Act, the 2013 Civil Code and the 2011 Civil Organization Registration Act. The legislative amendments were adopted to: (i) simplify the contents of association statutes; (ii) rationalize the court registration and change registration procedures of civil society organizations (court examination limited to compliance with essential legal requirements on number of founders, representative bodies, operation, mandatory content of statutes, legal association objectives, etc.; notices to supply missing information no longer issued on account of minor errors); and (iii) accelerate the registration by courts of civil society organizations (termination of the public prosecutor's power to control the legality of civil society organizations; maximum time limit for registration). The Committee notes, however, that the ITUC reiterates that trade union registration regulated by the Civil Organization Registration Act is still being subjected to very strict requirements and numerous rules that operate in practice as a means to obstruct the registration of

new trade unions, including the stringent requirements on trade union headquarters (unions need to prove that they have the right to use the property), and alleges that in many cases judges refused to register a union because of minor flaws in the application form and forced unions to include the enterprise name in their official names. The Committee further notes that the workers' group of the National ILO Council states that, when the new Civil Code entered into force, all trade unions had to modify their statutes to be consistent with the law and at the same time report the changes to the courts, and reiterates that these regulations pose a serious administrative burden on trade unions.

The Committee observes the persisting divergence between the statements of the Government and the workers' organizations. ***The Committee requests the Government to provide its comments on the observations of the ITUC and the workers' group of the National ILO Council concerning in particular the stringent requirements in relation to union headquarters, the alleged refusal of registration due to minor flaws, the alleged imposition of including the company name in the official name of associations, and the alleged difficulties created or encountered by trade unions because of the obligation to bring their by-laws into line with the Civil Code.*** The Committee recalls that, although the formalities of registration allow for official recognition of workers' or employers' organizations, these formalities should not become an obstacle to the exercise of legitimate trade union activities nor allow for undue discretionary power to deny or delay the establishment of such organizations. ***Accordingly, the Committee requests the Government to: (i) engage without delay in consultations with the most representative employers' and workers' organizations to assess the need to further simplify the registration requirements, including those relating to union headquarters; and (ii) take the necessary measures to effectively address the alleged obstacles to registration in practice, so as not to impede the right of workers to establish organizations of their own choosing. In the absence of the solicited information, the Committee also requests the Government once again to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.***

***Article 3. Right of workers' organizations to organize their administration.*** The Committee notes that the ITUC alleges that trade union activity is severely restricted by the power of national prosecutors to control trade union activities, for instance by reviewing general and ad hoc decisions of unions, conducting inspections directly or through other state bodies, and enjoying free and unlimited access to trade union offices; and further alleges that, in the exercise of these broad capacities, prosecutors questioned several times the lawfulness of trade union operations, requested numerous documents (registration forms, membership records with original membership application forms, minutes of meetings, resolutions, etc.) and, if not satisfied with the unions' financial reporting, ordered additional reports, thereby overstepping the powers provided by the law. The Committee notes the Government's indication that, while public prosecutors no longer have the right to control the legality of the establishment of the civil society organizations, they retain the power to control the legality of their operation. The Committee generally recalls that acts as described by the ITUC would be incompatible with the right of workers' organizations to organize their administration enshrined in *Article 3* of the Convention. ***The Committee requests the Government to provide its comments with respect to the specific ITUC allegations above.***

***Right of workers' organizations to organize their activities.*** The Committee had previously noted that: (i) the Strike Act, as amended, states that the degree and condition of the minimum level of service may be established by law, and that, in the absence of such regulation, they shall be agreed upon by the parties during the pre-strike negotiations or, failing such agreement, they shall be determined by final decision of the court; and (ii) excessive minimum levels of service are fixed for passenger transportation public services by Act XLI of 2012 (Passenger Transport Services Act), both at the local and suburban levels (66 per cent) and at national and regional levels (50 per cent); as well as with regard to postal services by Act CLIX of 2012 (Postal Services Act), for the collection and delivery of official documents and other mail. The Committee trusted, in view of the consultations undertaken on the modification of the Strike Act, that due account would be taken of its comments during the legislative review.

The Committee notes that the Government refers again to the relevant provisions of the Strike Act (section 4(2) and (3)) and to the Passenger Transport Services Act and Postal Services Act. In the Government's view, by regulating the extent of sufficient services in respect of two basic services that substantially affect the public and thus creating a pre-clarified situation, the legislature promoted legal certainty in the context of the exercise of the right to strike. The level of sufficient services was determined seeking to resolve the potential tension between the exercisability of the right to strike and the fulfilment of the State's responsibilities to satisfy public needs. The Government further indicates that negotiations on the amendment of the Strike Act took place in the framework of the VKF throughout 2015 and 2016, in the course of which the trade unions considered that the extent of sufficient services in the passenger transport sector was excessive. The employees' and employers' sides managed to agree on a few aspects of the amendment of the Strike Act, but failed to reach an agreement regarding, inter alia, which institution should be authorized to determine the extent of sufficient services in the absence of a legal provision or agreement. Stressing the importance of a compromise of the social partners on the amendment proposals of the Strike Act, the Government adds that, since the trade unions had announced proposals at the end of 2016 but had not submitted them during the first half of the year, no further discussions have taken place in 2017. The Committee further notes that the workers' group of the National ILO Council reiterates that the strike legislation contains an obligation to provide sufficient service during strike action which in some sectors virtually

precludes the exercise of the right to strike (for example by requiring 66 per cent of the service to be provided during the strike and ensuring the feasibility of this rate through extremely complicated rules).

The Committee recalls that, since the establishment of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, workers' organizations should be able, if they so wish, to participate in establishing the minimum service, together with employers and public authorities; and emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. Moreover, any disagreement on such services should be resolved by a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service, and empowered to issue enforceable decisions. The Committee further recalls that the minimum service 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 that, in the past, it has considered that a requirement of 50 per cent of the volume of transportation may considerably restrict the right of transport workers to take industrial action. ***The Committee therefore once again highlights the need to amend the relevant laws (including the Strike Act, the Passenger Transport Services Act and the Postal Services Act) in order to ensure that the workers' organizations concerned may participate in the definition of a minimum service and that, where no agreement is possible, the matter is referred to a joint or independent body. The Committee expects that the consultations on the modification of the Strike Act undertaken within the framework of the VKF will continue. It requests the Government to provide up-to-date information on the status or results of the negotiations with particular regard to the manner of determining minimum services and the levels imposed in the postal and passenger transport sectors, and expects that the Committee's comments will be duly taken into consideration during the legislative review.***

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

The Committee notes the observations received on 1 September 2015 and 1 September 2017 from the International Trade Union Confederation (ITUC), alleging acts of anti-union dismissals, union busting and intimidation in several enterprises, and criticizing in particular the excessive limitation of the scope of collective bargaining and the employers' power to unilaterally modify the scope and content of collective agreements. The Committee also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which denounce that: (i) the law does not allow trade unions with less than 10 per cent representation among the workers to negotiate collective agreements, not even with respect to their own members; (ii) the law restricts the 'coalition' freedoms of trade unions for entitlement to collective bargaining so that they cannot seek to collectively attain the 10 per cent threshold; and (iii) in those cases where no trade union represents the required percentage, the workers' council is entitled to enter into a collective bargaining agreement (except on wage issues). ***The Committee requests the Government to provide its comments with respect to the observations of the ITUC and the workers' group of the National ILO Council, including to clarify whether the representativity threshold applies to collective agreements at both enterprise and industry levels.***

The Committee further notes several judgments of the Supreme Court of Hungary (Curia) supplied by the Government, which have a bearing on the Convention, in particular on the promotion of collective bargaining.

***Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.*** The Committee previously noted the Government's indications that: (i) section 82 of the Labour Code provides compensation not exceeding the worker's 12-month absence pay in case of unlawful dismissal of trade union officials or members; (ii) reinstatement is granted in case of dismissals violating the principle of equal treatment (section 83(1)(a)) or dismissals violating the requirement for prior consent of the union's higher body before the termination of a union official (section 83(1)(c)); and (iii) while the Labour Code does not contain penalties for acts of anti-union discrimination against union officials and affiliates, the Equal Treatment Authority (ETA) may, in such cases, levy fines. The Committee notes with ***interest*** the Government's indication that Bill No. T/17998 on the amendment of legislation related to the entry into force of the Act on the General Administrative Order, which will also bring about the harmonization of the Labour Code and relevant ILO Conventions, contains inter alia a provision amending the definition of worker representatives (section 294(1)(e) of the Labour Code), the purpose of which is to ensure that, in the event of unlawful termination of a worker representative, the possibility of requesting reinstatement into the original job will also be awarded to union officers, not only to elected representatives as is currently the case under section 83(1)(d). ***The Committee expects that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities, and requests the Government to provide information on developments in relation to the adoption of new legislative provisions in this regard. In the absence of the information solicited from the Government with respect to the working of the ETA, the Committee requests the Government once again: (i) to indicate whether, given that section 16(1)(a) of the Equal Treatment Act stipulates that the ETA may order the elimination of the situation constituting a violation of law, the ETA may order on that basis reinstatement in case of anti-union dismissals of trade union officials and members; (ii) to provide information as to whether the ETA may order compensation on the basis of section 82 of the Labour Code; and (iii) to provide information on the average duration of the proceedings before the ETA related to***

*anti-union discrimination (including of any subsequent appeal procedures before the courts), as well as on the average duration of purely judicial proceedings.*

*Article 2. Adequate protection against acts of interference.* In its previous comments, the Committee, while noting the Government's indication that the Constitution and the current national legislation were sufficient to prevent acts of interference, had requested the Government to take steps to adopt specific legislative provisions prohibiting acts of interference. Noting that the Government provides no information in this respect, the Committee recalls that it considers that the provisions of the Labour Code and the Equal Treatment Act do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. ***The Committee requests the Government once again to take all necessary measures to adopt specific legislative provisions prohibiting such acts of interference on the part of the employer and making express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions.***

*Article 4. Collective bargaining in practice.* ***The Committee requests the Government to provide information on the number of collective agreements signed, the sectors concerned and the share of the workforce covered by collective agreements.***

## Indonesia

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1998)***

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) dated 1 September 2017 and the Confederation of Indonesian Trade Unions (KSPI) and the Indonesia Trade Union Prosperity (KSBSI) dated 30 August 2017 and the Government's replies thereon. The Committee further notes the Government's detailed reply to the 2016 ITUC observations, as well as to the 2016 observations from the International Organisation of Employers (IOE) and the Indonesian Chamber of Commerce and Industry (APINDO).

*Trade union rights and civil liberties.* The Committee recalls that its previous comments concerned police inaction in relation to violence during a demonstration in Bekasi in 2013. While observing the KSPI and KSBSI statement that it had not received a copy of the police investigation report, the Committee notes the Government's reply that the report had been submitted to the complainant.

The Committee previously noted the recommendation of the direct contacts mission (DCM), which visited the country in October 2016, that the 2005 Police Guidelines on the conduct of police in handling law and order in industrial disputes be used as a basis for full consultations with all stakeholders, led by the Ministry of Manpower, in order to disseminate information on the Guidelines, ensure their implementation and consider their review. The Committee notes that the KSPI and the KSBSI complain that the Government has yet to take any initiative in this regard, while the Government indicates that it has disseminated information about the Guidelines to trade unions, employers' associations and local government. ***The Committee requests the Government to engage in tripartite discussion on the most effective manner of ensuring the effective implementation of a code of conduct for workers' demonstrations and industrial action and to provide information on the progress made in this regard.***

As regards the Committee's previous requests to the Government to take the necessary measures to repeal or amend sections 160 and 335 of the Penal Code, respectively on "instigation" and "unpleasant acts" against employers, the Committee notes from the Government's report that the Bill on the Penal Code is currently under discussion in the House of Representatives. It further notes, however, the concerns raised by the KSPI and the KSBSI as to the continuing vague drafting of these provisions and the absence of tripartite consultation in this regard. In addition, the Committee notes that the KSPI and KSBSI provide an example of two federation leaders who were charged in June 2017 under these sections for questioning management policy, while the Government replies that this case was settled by the Provincial Manpower Office. ***The Committee expects that the clarifications necessary to ensure that these sections are not applied to abstract trade union activities will be made without delay, and again requests the Government to provide a copy of the revised Penal Code once it is adopted.***

*Article 2 of the Convention. Right to organize of civil servants.* In its previous comments, the Committee requested the Government to guarantee the freedom of association of civil servants, pursuant to section 44 of Act No. 21 of 2000 concerning trade unions, through issuing the implementing regulations called for in the Act. The Committee notes the Government's indication that Law No. 5 of 2014 on State Civil Servants, which stipulates that the civil servants organization is the Professional Corps of Indonesian State Civil Apparatuses (KPPASN), will be further promulgated in the implementing government regulation that is still being discussed through coordination meetings with the Ministry of State Apparatus Reform. The Government further expresses its gratitude for the offer of ILO technical assistance in this regard. ***The Committee underlines once again the importance of giving effect to the right of all civil servants to form and join the organization of their own choosing, and trusts that the implementing regulations under the 2000 Act will be adopted in the near future, taking advantage of the technical assistance that the Office may provide.***

*Article 3. Right of workers' organizations to organize their activities.* The Committee recalls its previous comments concerned a number of requirements in relation to the exercise of the right to strike and requested the Government to provide statistics on the number of interest disputes referred to conciliation, mediation and arbitration without the consent of the parties. The Committee notes the information provided by the Government that there were 100 reported interest disputes as of June and that these were resolved through mediation with the average period taken corresponding to that provided in Act No. 2. ***The Committee requests the Government to continue to provide information on the number of interest disputes referred to conciliation and mediation and in particular to specify the number of interest disputes referred to the industrial court for a final determination without the consent of both parties and any relevant information on the circumstances of such cases.***

The Committee further observes that the KSPI and the KSBSI continue to raise concerns about Presidential Decree No. 63 of 2004 on the security of national vital objects and Ministry of Industry Decree No. 466/2014 which enable companies or industrial areas to request assistance from the police and the military in the event of disruption and threat to national vital objects in their jurisdiction. The Committee notes the Government's reiteration that these safeguards are not intended to restrict the exercise of freedom of association and that the placement of police aims to ensure protection and provide services to maintain security and public order and enable workers and employers to exercise their right to strike, demonstrate or lockout legally and peacefully. ***Observing that the KSPI and the KSBSI claim that these Decrees are used in practice to suppress the exercise of freedom of association and refer to examples in this regard, the Committee invites the Government to discuss the effect of these decrees within the framework of the National Tripartite Council and to provide information on the outcome.***

*Article 4. Dissolution and suspension of organizations by the administrative authority.* In its previous comments, the Committee requested the Government to provide information on any measures taken to ensure that unions may not be dissolved or suspended simply due to delays in informing of constitutional changes or foreign aid, as well as on any use of this authority. ***The Committee welcomes the Government's indication that delays taken for the notification of constitutional changes or receipt of foreign aid will not result in the dissolution of trade unions, and requests the Government to inform the Committee if section 42 should be used in conjunction with sections 21 and 31 for the dissolution of a union in the future.***

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

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) dated 1 September 2017 and the Confederation of Indonesian Trade Unions (KSPI) and the Indonesia Trade Union Prosperity (KSBSI) dated 30 August 2017 and the Government's replies thereon.

*Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination and employer interference.* In its previous comments, the Committee had requested the Government to take steps to amend the legislation to ensure comprehensive protection against anti-union discrimination, providing for effective procedures that may impose sufficiently dissuasive sanctions against such acts. It further requested the Government to provide statistics on the number of complaints of anti-union discrimination and interference filed with: (a) the police; (b) the labour inspectorate; and (c) the courts, as well as the steps taken to investigate these complaints, the remedies and sanctions imposed, and the average duration of proceedings under each category. It also requested the Government to provide a copy of Decree No. 03 of 1984 of the Minister of Manpower.

The Committee notes the information provided in the Government's report on a number of labour-related cases reported to the police, as well as on complaints submitted to the Ministry of Manpower on broad range of issues. ***The Committee requests the Government to continue to provide statistics most specifically as regards complaints of anti-union discrimination and to provide information on any remedies or sanctions imposed and whether any of these complaints were brought to the courts.***

*Article 2. Adequate protection against acts of interference.* The Committee's previous comments concerned the need to amend section 122 of the Manpower Act so as to discontinue the presence of the employer during a voting procedure held in order to determine which trade union in an enterprise shall have the right to represent the workers in collective bargaining. ***Noting the Government's indication that it will convey the steps taken in this regard when the Government next reviews the Manpower Act, the Committee requests it to provide information on any developments to ensure that workers may carry out their activities without undue interference from the employer.***

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee had requested the Government to take measures to amend sections 5, 14 and 24 of Act No. 2 of 2004 concerning industrial relations dispute settlement, which enables either of the parties to an industrial dispute to file a legal petition to the Industrial Relations Court for final settlement of the dispute if conciliation or mediation has failed. The Committee notes that the Government once again affirms that the Act has no relation with collective bargaining in the process of resolving industrial relations disputes but only bargaining for the drafting of a collective employment agreement. The Committee once again emphasizes that compulsory arbitration at the initiative of one party engaged in negotiations for a collective bargaining agreement does not promote voluntary collective bargaining. ***The Committee once again requests the Government to take the necessary measures to review sections 5, 14 and 24 of Act No. 2 of 2004 after consultations with the social***

*partners concerned, so that the recourse to compulsory arbitration during collective bargaining can only be invoked in the case that both parties agree, or in the case of public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term and acute national crises. It further requests the Government once again to provide information on the number of cases referred to compulsory arbitration by only one party to the dispute and the circumstances involved in those cases.*

*Recognition of organizations for the purposes of collective bargaining.* In its previous comments, the Committee noted that under section 119(1) and (2) of the Manpower Act, in order to negotiate a collective agreement, a union must have membership equal to more than 50 per cent of the total workforce in the enterprise or receive more than 50 per cent support in a vote of all the workers in the enterprise and if it does not obtain this majority, may only request to engage in collective bargaining after a period of six months. The Committee had requested the Government to provide information on the manner in which collective bargaining could be conducted in the event that no union represented 50 per cent of the workers and notes the information provided in the Government's report that in such cases the union may be part of a bargaining team that represents more than half of the workforce. ***The Committee requests the Government to provide statistics in its next report on the number of collective bargaining agreements concluded at enterprise level and the coverage of workers by such collective agreements.***

*Federations and confederations.* The Committee previously noted the Government's indication that there has been no report of federations or confederations of trade unions having signed collective agreements, and requested it to ensure that such information is publicly available and to continue to provide information concerning collective agreements signed by federations or confederations. The Committee had noted the Government's indication that it welcomed the recommendation of the direct contacts mission, which visited the country in October 2016, for a pilot exercise promoting collective bargaining in Bekasi. The Committee notes the indication in the Government's latest report that national tripartite consultations took place in this regard on 10 May 2017 near Bekasi and that the constituents had recommended capacity building for a better bipartite collaboration, collective bargaining, dispute settlement and improved capacity of trade unions and the employers' organization to increase their membership. The Government adds that tripartite dialogue will take place in Bekasi as a follow-up to this activity to discuss priority activities. ***The Committee requests the Government to continue to provide information on the developments concerning this pilot exercise and its impact on collective bargaining at the sectoral and regional levels.***

*Export processing zones (EPZs).* In its previous observations, the Committee had repeatedly requested the Government, pursuant to allegations of violent intimidation and assault of union organizers, and dismissals of union activists in EPZs, to provide information on the number of collective agreements in force in EPZs and the percentage of workers covered, as well as on the number of complaints of anti-union discrimination and employer interference in EPZs and the relevant investigation and remediation measures. The Committee notes the Government's affirmation in its report that the labour law is applied throughout the zones and there is no different treatment of workers or unions in the zones. The Committee observes however that several specific cases were raised in the observations provided by the ITUC, the KSPI and the KSBSI and the Government in its reply has referred to a variety of efforts to address these concerns. ***The Committee invites the Government to examine these matters within the framework of the National Tripartite Council with a view to most effectively addressing the specific concerns and to enable consideration of whether broader steps should be taken to ensure that freedom of association is effectively protected in EPZs. It requests the Government to provide detailed information on of the results of the tripartite consideration of this matter.***

## Iraq

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

The Committee notes with *interest* the approval of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on 21 November 2017 by the Parliament of the Republic of Iraq.

The Committee notes the late receipt of the Government's report. It observes that the Government reports the adoption of the new Labour Code in 2015. The Committee will examine the Government's report and the new legislation at its next session in order to evaluate its conformity with the Convention and ensure that the comments made by the Committee regarding the previous legislation have been taken into consideration.

## Ireland

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

#### ***Follow-up to the conclusions of the Committee on the Application of Standards*** ***(International Labour Conference, 105th Session, May–June 2016)***

In its previous comments, the Committee had noted the discussion that took place in the Conference Committee on the Application of Standards in June 2016 concerning the application of the Convention and in particular the application of Irish competition law to self-employed workers.

The Committee notes the general observations provided by the Irish Business and Employers' Confederation (IBEC) and the International Organisation of Employers (IOE) dated 31 August and 1 September 2017 to the effect that recent developments in Ireland's industrial relations framework have further strengthened an already robust structure for the protection and promotion of the rights of freedom of expression and to form and join trade unions. They further refer to the recent amendments to the Competition Law noted below.

*Article 4 of the Convention. Promotion of collective bargaining. Self-employed workers.* In its previous comments, the Committee noted the Government's statement of the need to protect vulnerable workers and the multifaceted challenges raised with respect to the issue presented by false self-employment. The Committee further noted with interest the Government's indication that a Bill had been introduced in Parliament to amend the Competition Act, 2002, to establish rights for self-employed individuals to be represented by a trade union for the purposes of collective bargaining and price setting.

The Committee notes with *satisfaction* and welcomes the adoption on 7 June 2017 of the Competition (Amendment) Act which, in particular, provides that the Act's prohibition of entering into agreements setting prices shall not apply to collective bargaining and agreements in respect of relevant categories of self-employed workers as defined in schedule 4 to include actors engaged as voice-over actors, musicians engaged as session musicians and journalists engaged as freelance journalists. The Act further defines fully dependent and false self-employed workers for whom a trade union may apply for exclusion for the purposes of collective bargaining.

The Committee takes note of the concerns raised by the IBEC and the IOE that: (i) there was no consultation on the measures taken in this regard; (ii) the parameters for defining "fully dependent" or "false" self-employed workers are not clear and that such categories, rather than being determined by a court, are to be determined by the Minister in consultation with a trade union only; (iii) it is unclear with whom such a worker should engage in collective bargaining, the possible expansion of schedule 4 being a matter of concern; and (iv) these changes may have significant adverse implications for Ireland's competitiveness. *While recalling its previous comments emphasizing the importance of promoting full and voluntary collective bargaining for all workers covered by the Convention, including self-employed workers, the Committee requests the Government to provide its comments on these observations, including all available information on the application of the Amendment Act in practice, as well as on the other points made by the IBEC and the IOE in relation to the Industrial Relations (Amendment) Act 2015.*

## Jamaica

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

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2015. *The Committee requests the Government to provide its comments in this regard.*

*Article 2 of the Convention. Right of workers to establish and join organizations.* The Committee notes the indications of the ITUC that section 6(4) of the Trade Union Act (TUA) provides that, if an application for registration of a trade union has not been made in line with the Act, or if registration of a trade union has been refused or cancelled, every member of the trade union who continues to be a member thereof, and every person who participates in any meetings or proceedings of the trade union, knowing that it is not registered under the Act, shall be guilty of an offence and liable on summary conviction to a penalty of up to 500 Jamaican dollars. *Acknowledging that 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, but also recalling that the exercise of legitimate trade union activities should not be dependent upon registration and that, therefore, penalties should not be imposed upon workers for their membership and participation in an unregistered trade union, the Committee requests the Government to take the necessary measures to amend the legislation in this respect.*

*Article 3. Interference in the financial administration of a trade union.* The Committee notes that the ITUC denounces that, in addition to the obligation on the treasurer to submit to the Registrar annual statements of account, audit certificates, membership lists and changes to the rules and officers of the trade union, the Registrar may, in line with section 16(2) of the TUA, at any time, request the treasurer or any trade union member to provide detailed accounts of the revenue, expenditures, assets, liabilities and funds of the trade union in respect of any specified period. *Recalling that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports, and that the*

*discretionary rights of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions, the Committee requests the Government to take the necessary measures to restrict the Registrar's powers in this regard.*

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

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

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2015, which refer to matters already examined by the Committee and also denounce fixed and unreasonable procedural requirements for, and limitations on, collective bargaining. *The Committee requests the Government to provide its comments in this regard.*

*Article 4 of the Convention. Right to collective bargaining.* The Committee had previously referred to the following matters:

- the denial of the right to negotiate collectively in cases where a trade union fails to prove that at least 40 per cent of the workers in the unit are its members or, when having met the former condition, a single union that is engaged in the procedure of obtaining recognition does not obtain 50 per cent of the votes of the workers in a ballot that the Minister has caused to be taken (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); and
- the need to take measures to amend the legislation so that a ballot is made possible when one or more trade unions are already established as bargaining agents and another trade union claims that it has more affiliated members in the bargaining unit than the other trade unions, and therefore invokes its most representative status in the unit in order to be considered as a bargaining agent.

The Committee notes that in its report the Government indicates that there is no new development in relation to lowering the mentioned percentage of workers. The Committee further notes that the Government does not provide any new information on legislative amendments allowing a ballot in cases of disputes concerning representativeness. *Regretting the lack of progress, the Committee firmly hopes that the Government will take the necessary measures in the very near future to amend its legislation in order to: (i) lower the percentage mentioned or, if no union obtains the required 50 per cent of the votes of the total number of workers to be declared the exclusive bargaining agent, to grant collective bargaining rights to all the unions, at least on behalf of their own members; and (ii) allow a ballot in cases of disputes concerning representativeness, so as to bring it into full conformity with the Convention. The Committee requests the Government to provide information on any developments in this regard.*

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

## **Japan**

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

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC-RENGO) dated 24 July 2017 and communicated with the Government's report, as well as the Government's reply thereto, and the observations by the Japan Business Federation (NIPPON KEIDANREN) dated 3 August 2017 which were also forwarded with the Government's report. The Committee takes note of the observations received on 1 September 2017 from the International Organisation of Employers (IOE) endorsing the observations of NIPPON KEIDANREN. The Committee further notes the observations by the National Confederation of Trade Unions (ZENROREN) dated 21 September 2017 on violations of trade union rights in the public service and the Government's reply thereto. The Committee observes that the Government's report and comments also provide replies to the observations received in 2014 from ZENROREN and the Federation of Prefectural and Municipal Workers' Unions (JICHIROREN).

*Article 2 of the Convention. Right to organize of firefighting personnel and prison officers.* The Committee recalls its previous comments concerning the need to recognize the right to organize for firefighting personnel and prison officers. With regard to firefighting personnel, the Committee had previously noted that a committee on the right to organize of fire defence personnel, established within the Ministry of Internal Affairs and Communications to study the right to organize of firefighting personnel in view of both respect for basic labour rights and assurance of reliability and safety for the people, issued a report in December 2010 which found no practical obstacles to granting the right to organize to firefighters. The Committee had also noted the information provided by the Government on efforts made over the past decade and a half to introduce the Fire Defence Personnel Committee System to guarantee fire defence personnel participation in determining working conditions. The Government, however, informed that the Bill on Labour Relations of Local Public Service Employees which would have granted the right to organize for fire defence personnel was dropped by the Parliament and further meetings to exchange views were conducted by the Minister in charge of civil service reform.

The Committee recalls that in its 2014 observations, JICHIROREN indicated that the Fire Defence Personnel Committee System functioned since 1995 with defects that remained uncorrected and cannot stand as the compensatory scheme for the right to organize of firefighters as contended by the Government. The Committee also notes the renewed

concern by the JTUC–RENGO in relation to the ongoing denial of the right to organize to firefighters and its apprehension that the denial of this fundamental right will become permanently enshrined. The JTUC–RENGO also denounces an increasing number of incidents of harassment at the firefighters’ workplace, which it regards as the result of the denial of the right to organize. Measures against harassment taken in July 2017 by the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications in this regard are considered as insufficient stopgap measures. The Committee takes note of the information provided in the Government’s latest report in relation to the concerns raised. It notes the indication that the Fire and Disaster Management Agency advised all fire departments to take measures in relation to the proposals made in July 2017 by a working group on countermeasures against harassment. The Committee further notes that the Government is considering a new initiative comprising fact-finding surveys on how the Fire Defence Personnel Committee System is being administered which will allow both the management and the staff nationwide to express their opinions through a questionnaire. The Government indicates that further measures will be taken based on the results of the initiative. ***The Committee requests the Government to provide information on the conduct of the surveys, their outcome and the measures taken or contemplated as a result. The Committee expects that this new engagement of the Government will contribute to further progress towards ensuring the right to organize for firefighting personnel.***

In respect of prison officers, the Committee notes the Government’s reiteration, supported by NIPPON KEIDANREN, that it considers prison officers by the nature of their duties to be included in the category of police; they are therefore denied the right to organize in accordance with *Article 9* of the Convention. The Government provides details on the number of prison officers (17,600 in 2017) and on the distinction among staff in penal institutions: (i) prison officers with a duty of total operation in penal institutions, including conducting security services with the use of physical force, who are allowed to use small arms and light weapons; (ii) penal institution staff other than prison officers, who are engaged directly in the management of penal institutions or the treatment of inmates; and (iii) penal institution staff designated, by virtue of the Code of Criminal Procedure, to carry out duties of the judicial police officials with regard to crimes which occur in penal institutions and who have the authority to arrest, search and seize. The Committee also notes that, according to the JTUC–RENGO, the Government has not given concrete consideration to the issue of the right to organize of prison officers despite the Committee’s request. The Committee considers that even though some of these officers are authorized by virtue of the law to carry a weapon in the course of their duties, this does not mean that they are members of the police or armed forces. ***Noting the clarification from the Government on the distinction among staff in penal institutions, the Committee requests the Government, in consultation with the national social partners and other concerned stakeholders, to take the necessary measures to ensure that prison officers other than those with the specific duties of the judicial police may form and join the organization of their own choosing to defend their occupational interests. The Committee requests the Government to provide information on progress made in this regard.***

*Article 3. Right to strike of public sector employees.* The Committee recalls its long-standing comments on the need to ensure that public service employees could enjoy the right to strike without risk of sanctions, with the possible exceptions of public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. In that connection, the Committee had previously observed that the bills establishing the new labour relations system had not been adopted by the Diet and that the Amendment Act which was adopted in April 2014 provided that the Cabinet Bureau of Personnel Affairs would “make efforts to reach agreements on measures for the autonomous labour–employer relations system, based on section 12 of the Civil Service Reform Law, gaining the understanding of the people, hearing from employees’ organizations”. In its report, the Government indicates that the Cabinet Bureau of Personnel Affairs has since been exchanging continuously with employees’ organizations on various topics. These exchanges, however, led the Government to observe that there are still various issues to be considered in addition to the changing environment in labour relations. The Government therefore intends to continue to consult employees’ organizations on the measures for the autonomous labour–employer relations system. The Committee notes the JTUC–RENGO’s observations regretting the absence of progress in the recognition of the right to strike of public service employees. ***Noting that there is no meaningful progress despite the continuous dialogue between the Government and the social partners on measures for the autonomous labour–employer relations system, the Committee expects that the Government will make every effort to expedite its consultation with the social partners concerned, and that it will adopt measures for the autonomous labour–employer relations system that will ensure basic labour rights for public service employees. The Committee requests the Government to report any progress made in this regard, and in particular any measure taken or envisaged to ensure that public service employees who are not exercising authority in the name of the State and who are not working in essential services in the strict sense of the term can enjoy the right to strike and to exercise industrial action without risk of sanction.***

In respect of the compensatory guarantees for workers who are deprived of the right to carry out industrial action, the Committee had previously noted the authority of the National Personnel Authority (NPA). The Committee notes the observations made by the JTUC–RENGO reiterating that the NPA recommendation system is defective as a compensatory measure. In particular, the JTUC–RENGO is of the view that the NPA is subordinated to the Government and its recommendations are left to political decision. The Committee notes the Government’s indication that in order to perform its compensatory functions properly, the NPA has established a Deputy Director-General for Employees’ Organizations’ Affairs and a Counsellor to hear opinions from the employees’ organizations. In 2016, the NPA held 217 official meetings with employees’ organizations and made recommendations. The Government concludes that the NPA is fully functional as a compensatory measure for the restrictions on basic labour rights of public service employees. ***In view of the***

*persistent divergent views on the adequate nature of the NPA as a compensatory measure for restrictions placed on basic labour rights of public service employees, the Committee encourages the Government to consult the social partners concerned in search of the most appropriate mechanisms which would ensure impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, are binding and fully and promptly implemented. The Committee requests the Government to provide information on any progress made in this regard and, in the meantime, to continue to provide information on the functioning of the NPA recommendation system.*

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

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC–RENGO) dated 24 July 2017 and communicated with the Government’s report, as well as the Government’s reply thereto, and the observations by Japan Business Federation (NIPPON KEIDANREN) dated 3 August 2017 which were also forwarded with the Government’s report. The Committee takes note of the observations received on 1 September 2017 from the International Organisation of Employers (IOE) endorsing the observations of the NIPPON KEIDANREN. The Committee further notes the observations by the National Confederation of Trade Unions (ZENROREN) dated 21 September 2017 on obstacles to collective bargaining in practice and the Government’s reply thereto. The Committee observes that the Government’s report and comments also provide replies to the observations received in 2014 from ZENROREN.

*Articles 4 and 6 of the Convention. Collective bargaining rights of public service employees not engaged in the administration of the State in the context of the civil service reform.* The Committee recalls that its previous comments concerned the need for measures to ensure the promotion of collective bargaining for public employees who are not engaged in the administration of the State in the framework of ongoing consultations on the reform of the civil service. The Committee previously regretted that the package of reform bills, which was the fruit of long consultations with the social partners and civil society over many years and which provided for a new framework in the national public service where both parties to labour–employer relations negotiate and determine autonomously the issue of working conditions and promote reform of the personnel management and remuneration system, was ultimately not adopted by the Diet. As a result, a number of public servants not engaged in the administration of the State remained deprived of their collective bargaining rights. The Committee had requested the Government to provide information on the steps taken by the Cabinet Bureau of Personnel Affairs to engage in consultation with the social partners as required by the Civil Service Reform Law so as to ensure collective bargaining rights for all public servants not engaged in the administration of the State.

The Committee notes the JTUC–RENGO’s observations that there has been no progress in the consultations requested by the Committee due to failure to act and pro forma responses by the Government. More specifically, the JTUC–RENGO alleges that since the inception of the Cabinet Bureau of Personnel Affairs the Government has not engaged in any meaningful consultation with public service employees’ trade unions on the issues. According to the JTUC–RENGO, in spring 2017 in reply to the request from the Public Service Employee Trade Union Liaison Council (a consultative organization consisting of trade unions affiliated with the JTUC–RENGO and related to non-worksites public service employees), the Minister in charge of national public service employees had merely repeated the same response for three years in succession: “Regarding an autonomous industrial relations system, since a wide range of issues are involved, I would like to engage in prudent considerations while exchanging views with all of you.” On the other hand, the Committee notes the Government’s indication that the Cabinet Bureau of Personnel Affairs has, since its establishment, been exchanging continuously with employees’ organizations on various topics. These hearings, however, led the Government to observe that there are still wide-ranging issues to be considered in addition to the changing environment in labour relations. The Government therefore intends to continue to consult employees’ organizations on the measures for the autonomous labour–employer relations system. The Committee notes the observations from the NIPPON KEIDANREN supporting the Government’s position.

Furthermore, the Committee notes the Government’s indication that after the Cabinet Bureau of Personnel Affairs was established, the National Personnel Authority (NPA) remained fully functional as a compensatory measure for the restrictions on basic labour rights of public service employees, and actually the Government had revised remuneration of public employees according to the NPA recommendation made after consultation with the social partners in an independent manner. The Committee notes the observations from the JTUC–RENGO that recommendations from the NPA are subordinated to the political decision of the Government. In the case of the recommendation on remuneration, the JTUC–RENGO regretted that the wage revision processes had been conducted in a unilateral and confusing way by the Government, which was illustrative of the fact that the NPA recommendation system is defective as a compensatory measure. *Noting the lack of meaningful progress, despite the continuous dialogue between the Government and the social partners on measures for the autonomous labour–employer relations system, the Committee expects that the Government will make every effort to expedite its consultation with the social partners concerned and that it will adopt measures for the establishment of the autonomous labour–employer relations system that will ensure, in the near future, collective bargaining rights for all public servants not engaged in the administration of the State. In the meantime, the Committee requests the Government to continue to provide information on the functioning of the NPA recommendation system as a compensatory measure to the denial of collective bargaining rights to the public service employees.*

The Committee recalls that, following observations from the JTUC–RENGO deploring the removal of collective bargaining rights from the national forestry project staff, it requested the Government to indicate the steps taken to ensure that national forestry project staff is afforded the full guarantees of the Convention, including the right to bargain collectively. The Committee notes the Government’s indication that at the time of the revision of the system, a supplementary resolution providing that “in order to ensure the fulfilment of various roles required for national forestry businesses, including maintenance/promotion of the public interest functions and promotion of integrated development/maintenance with privately owned forests, etc., efforts should be made in promoting and securing the appropriate level of the ceiling of the number of officials taking into account severe financial situations and the actual situation of site management, establishment of structures/systems, development of human resources, and transfer of skills, etc. and developing the working conditions of employees engaged in national forestry businesses” was adopted by the Committee on Agriculture, Forestry and Fisheries of the House of Representatives. The Government intends to consider the purport of this resolution by exchanging opinions on the working conditions of employees engaged in national forestry businesses. ***The Committee recalls once again its previous observation in which it highlighted that national forestry project staff are not among the category of workers that may be excluded from the scope of the Convention. The Committee firmly hopes that the Government will provide in its next report information on the consultations held and the measures taken to ensure that national forestry project staff is afforded the full guarantees of the Convention, including the right to bargain collectively.***

## Jordan

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

The Committee notes the observations of the Jordanian Federation of Independent Trade Unions (JFITU) received on 31 August 2017, which refer to general legislative issues and specific cases of anti-union harassment and interference. ***The Committee requests the Government to provide its comments in this respect.***

*Articles 1–6 of the Convention. Scope of the Convention. Foreign workers.* In its previous comments, the Committee had requested the Government to take the necessary legislative measures to ensure that foreign workers may become founding members and leaders of trade unions and employers’ organizations. The Committee notes the Government’s indication that section 98(e) of the Labour Code specifies that there is no impediment which stops the admittance of migrant workers as founder members if the rest of the conditions are met. The Committee notes, however, that the text of section 98(e) as amended in 2010 provides that the first condition for founding a workers’ or employers’ organization is to be Jordanian. The Committee further notes that the JFITU indicates in its observations that although the law was amended in 2010 to allow foreign workers to join unions, it does not permit them to form unions or to hold union office; thus, in sectors where migrants form the majority of the workforce, the establishment of trade unions and the exercise of the right to collective bargaining is very unlikely. ***The Committee requests the Government to provide clarification in this respect by indicating how foreign workers can enjoy the protection of the Convention, including the right to engage in collective bargaining through the organization of their own choosing, and to indicate whether consideration is being given to amending this provision. The Committee further requests the Government to indicate how these rights are exercised in practice, by indicating the names of any organizations that represent foreign workers and the number of collective agreements covering them.***

*Domestic and agricultural workers.* In its previous comments, the Committee had raised the issue of coverage of domestic and agricultural workers under the Labour Code. In this regard, the Committee notes the Government’s indication in its reply to the 2014 observations of the International Trade Union Confederation (ITUC) pursuant to which domestic workers, cooks and agricultural workers are covered by the Labour Code as specified in section 3; that no provision in the law prohibits their representation by trade unions and that they are represented by the general trade union for employees in food industries. However, the Committee also notes the Government’s diverging indication in its latest report that there is no impediment to the representation of these workers by trade unions provided the law is amended and the tripartite committee agrees thereto. Finally, the Committee notes the JFITU’s observations indicating that although the Labour Code was amended in 2008 to extend certain rights to domestic and agricultural workers, it remains unclear whether the law permits domestic and agricultural workers to create or join unions. The Committee notes that the 2008 amendment of section 3 of the Labour Code removed the express exclusion of domestic and agricultural workers from the scope of application of the Code, however, the amended section 3(b) indicates that the rules governing the employment conditions of these workers will be determined by a regulation to be adopted at a later stage. The Committee notes in this regard the JFITU’s indication that there appears to be a split in judicial opinion as to whether the Labour Code would apply or only the specific regulation referred to in section 3 would be applicable to the workers concerned. The Committee further notes that pursuant to section 10 of the Labour Code, domestic work, cooking, gardening and similar works are sectors that are open to the recruitment of foreign workers. In view of the above, the Committee notes with ***regret*** that despite the removal of the express exclusion of domestic and agricultural workers from the coverage of the Labour Code, the law and regulations still do not clearly guarantee these workers the rights set out in the Convention and that this situation might enhance the existing impediments to the exercise of the rights to organize and bargain collectively by the

foreign workers working in those sectors, who already face certain restrictions by virtue of their nationality. **Recalling that all workers other than the armed forces, the police and public servants engaged in the administration of the State are covered by the provisions of the Convention, the Committee urges the Government to take the necessary legislative or regulatory measures to ensure that agricultural and domestic workers, cooks, gardeners and similar workers can engage in collective bargaining through the organizations of their own choosing, and to provide information on measures envisaged or adopted in this regard.**

*Workers aged between 16 and 18 years.* In its previous comments, the Committee had noted that section 98(f) of the Labour Code specifies that trade union members must be at least 18 years of age and notes the Government's indication in this regard that the minimum age of admittance to trade unions of 18 years corresponds to the legal age for employment under Jordanian legislation. The Committee notes, however, that section 73 of the Labour Code prohibits the employment of minors under 16 years of age. The Committee considers that the prohibition of minor workers from trade union membership although they may be employed from the age of 16 would effectively exclude them from the protection of the Convention. **The Committee therefore once again requests the Government to take measures to amend section 98(f) so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, will be fully protected in their exercise of the rights falling within the scope of the Convention. It requests the Government to provide information on measures contemplated or adopted in this respect in its next report.**

*Workers not included in the 17 recognized sectors.* The Committee notes the Government's reply to the ITUC's 2014 observations, indicating that pursuant to a 1999 Order, the number of occupations and industries whose workers have the right to establish trade unions is set at 17. The Committee further notes the JFITU's observations indicating that under section 98 of the Labour Code, trade unions can only be established in government-designated sectors and that the official General Federation of Jordanian Trade Unions (GFJTU) has been unable to register unions outside those sectors. Thus, the workers not included in recognized sectors are not able to engage in collective bargaining through the organizations of their own choosing. The Committee notes with *concern* that such a system might leave out entire groups of workers from the benefit of the rights guaranteed under the Convention. **The Committee requests the Government to indicate in detail which are the 17 recognized sectors in which workers have the right to organize for purposes of collective bargaining and the occupations and industries included in each of them and to provide the relevant legislation, regulations and orders. The Committee further requests the Government to provide statistical information as to the number of workers included in the 17 recognized sectors and the total number of workers in the country.**

*Article 2. Adequate protection against acts of interference.* In its previous comments, the Committee had requested the Government to amend the legislation with a view to strengthening the sanctions against interference as it considered that the fines provided for in section 139 of the Labour Code could not have a sufficiently dissuasive effect. The Committee also notes the 2014 observations of the ITUC and those of the JFITU alleging that the Government subsidizes the GFJTU staff's wages and some of its activities and that it continues to influence their policies and activities, as well as those of their affiliates. **The Committee requests the Government to reply to these allegations. Noting that the Government has not provided any new information with regard to its previous comments in this regard, the Committee once again requests the Government to take measures, in full consultation with the representative organizations of workers and of employers, in order to strengthen the sanctions against interference and to provide information on measures envisaged or adopted in this respect.**

*Articles 4 and 6. Right to collective bargaining. Trade union monopoly.* The Committee notes the JFITU's observations indicating that not only can trade unions be established in government-designated sectors, but also that there may be only one union per sector; that unions are required to be affiliated to the only officially recognized federation, the GFJTU, and the limitation of one union per sector serves to exclude independent unions from organizing workers in the recognized sectors and representing their interests through collective bargaining. The Committee notes that section 98(d)(1) of the Labour Code indeed gives the Tripartite Committee (defined in section 43 of the Code) the authority to specify groups of occupations in which no more than one general trade union may be established, which seems to allow it to establish a trade union monopoly at the sector level. **Recalling that the imposition of trade union monopoly is inconsistent with the principle of free and voluntary collective bargaining established in Article 4 of the Convention, the Committee requests the Government to take the necessary legislative measures, including the review of section 98(d)(1) of the Labour Code, so as to provide for full freedom of association, and to provide information concerning the developments in this regard.**

*Collective bargaining in the public sector.* In its previous comments, the Committee had requested the Government to provide information concerning the right to collective bargaining in the public sector, notably the relevant constitutional amendments and the draft law on trade union work for public sector employees. **Noting that it has not received any information in this regard, the Committee once again requests the Government to provide information as to the latest developments in the process of adoption and the text of the draft law on trade union work for public sector employees and, recalling that only public servants engaged in the administration of the State can be excluded from the scope of the Convention, the Committee expresses the firm hope that the national legislation will recognize explicitly the right to collective bargaining in the public sector.**

## Kazakhstan

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2000)**

The Committee notes the observations of the International Organisation of Employers (IOE), received on 2 September 2017, containing the Employers' statements made before the 2017 Conference Committee on the Application of Standards (hereinafter, the Conference Committee).

The Committee further notes the observations on the application of the Convention by the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to issues raised by the Committee below, as well as informing that, on 25 July 2017, Ms Larisa Kharkova, the Chairperson of the now liquidated Confederation of Independent Trade Unions of Kazakhstan (KNPRK) was sentenced to four years of restriction on her freedom of movement, 100 days of compulsory labour and a five-year ban on holding any position in a public or non-governmental organization. The ITUC indicates that earlier in 2017, Mr Amin Eleusinov, the Chairperson of a union affiliated to the KNPRK, and Mr Nurbek Kushakbaev, the Vice-President of the KNPRK, were sentenced to two and two-and-a-half years in prison, respectively and prohibited from engaging in trade union activities after their release. Both were convicted for having called for a strike in response to a court decision to deregister the KNPRK due to its failure to re-register provincial branches in at least nine of the country's 16 regions. *Noting that these cases have been discussed by the Conference Committee in June 2017, the Committee urges the Government to provide its comments thereon without delay.*

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion that took place in the Conference Committee in June 2017 concerning the application of the Convention. The Committee observes that the Conference Committee noted the grave issues raised, which refer, in particular, to the revocation of the registration of the voluntarily unified KNPRK, as well as the infringement of the employers' freedom of association by the Law on the National Chamber of Entrepreneurs (NCE). The Conference Committee also noted the serious obstacles to the establishment of trade unions without previous authorization in law and in practice. The Conference Committee was concerned over the persistent lack of progress since the discussion of the case in June 2016 despite an ILO direct contacts mission (DCM) visiting the country in September 2016. The Committee notes that the Conference Committee called upon the Government to: (i) amend the provisions of the Trade Union Law of 2014 consistent with the Convention, on issues concerning excessive limitations on the structure of trade unions which limit the right of workers to form and join trade unions of their own choosing; (ii) amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of free and independent employers' organizations, without any further delay. In particular remove the provisions on the broad mandate of the NCE to represent employers and accredit employers' organizations by the NCE; (iii) allow trade unions and employers' organizations to benefit from and participate in joint cooperation projects and activities with international organizations; (iv) amend legislation to lift the ban on financial assistance to national trade unions and employers' organizations by international organizations; (v) take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents; (vi) amend legislation to permit judges, firefighters and prison staff to form and join a workers' organization; and (vii) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law. The Conference Committee considered that the Government should accept a high-level tripartite mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Judges, firefighters and prison staff.* With reference to the conclusions of the Conference Committee, the Committee notes that the Government indicates in its report that the prohibition imposed on judges to become members of trade unions (article 23(2) of the Constitution) does not imply the restriction on their right to establish and join associations of judges. Pursuant to article 23(2) of the Constitution, judges, like all citizens of the State, have the right to freedom of association to further and defend their professional interests, as long as they do not use the associations to influence the administration of justice and to pursue political goals. The Government points out that the Union of Judges is an organization which represents the interests of judges. The Committee recalls that the DCM had noted that the Union can raise, and has raised in the past, issues relating to working conditions and pensions of judges.

Regarding prison staff and firefighters, the Committee notes the Government's indication that prison staff, as part of the law enforcement bodies, are placed under the responsibility of the Ministry of Interior and as such are prohibited from establishing and joining trade unions. The Committee had previously noted from the DCM's report that among the employees of the law enforcement bodies (which include prison staff and firefighters), only employees who have a military or police rank are prohibited from establishing and joining trade unions. The Committee notes that the Government reiterates that all civilian staff engaged in the law enforcement bodies can establish and join trade unions and recalls in this respect that it had previously noted that these workers were represented by two sectoral trade unions. According to the Government, the Trade Union of Workers of Defence Forces of Kazakhstan represents 11,610 members

and a trade union active in the Ministry of Interior, represents 3,970 members. **While taking due note of this information, the Committee requests the Government to provide further clarification on the trade union rights of prison staff and firefighters who have no military or police rank.**

**Right to establish organizations without previous authorization.** The Committee recalls that following the entry into force of the Law on Trade Unions, all existent unions had to be re-registered. It further recalls that it had previously noted with concern that KNPRK affiliates were denied registration/re-registration. The Committee notes with **deep concern**, from the Conference Committee discussion and the ITUC's 2017 observations, that the KNPRK registration has been revoked despite the assurances given to the DCM by the Ministry of Justice and the Ministry of Labour and Social Development that they would look into this matter and assist the unions, as relevant. **The Committee urges the Government to take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents. It requests the Government to provide information on all developments in this regard.**

**Right to establish and join organizations of their own choosing.** The Committee had previously requested the Government to amend the following sections of the Law on Trade Unions so as to ensure the right of workers to freely decide whether they wish to associate or become members of a higher level trade union structure and to lower thresholds requirements to establish higher level organizations:

- sections 11(3), 12(3), 13(3) and 14(4), which require, under the threat of deregistration pursuant to section 10(3), the mandatory affiliation of sector-based, territorial and local trade unions to a national trade union association within six months following their registration, so as to ensure the right of workers to freely decide whether they wish to associate or become members of a higher level trade union structure; and
- section 13(2), which requires a sector-based trade union to represent no less than half of the total workforce of the sector or related sectors, or organizations of the sector or related sectors, or to have structural subdivisions and member organizations on the territory of more than half of all regions, cities of national significance and the capital, with a view to lowering this threshold requirement.

The Committee notes the Government's indication that a working group to improve trade union legislation was established under the auspices of the Ministry of Labour and Social Development. It met in March and April 2017 to discuss the proposed amendments. In May 2017, an interagency commission approved a Concept Draft Law on the amendment of the legislation. In this regard, the Committee notes the intention to amend the Law on Trade Unions so as to: (i) lower the minimum membership requirement from ten to three people in order to establish a trade union; and (ii) simplify the registration procedure. While welcoming this information, the Committee notes that the proposed amendments do not address the Committee's concerns described above. The Committee once again recalls that the free exercise of the right to establish and join organizations implies the right of workers to freely decide whether they wish to associate or become members of a higher level trade union structure and that the thresholds requirements to establish higher level organizations should not be excessively high. **The Committee therefore requests the Government to engage with the social partners in order to review sections 11(3), 12(3), 13(2) and (3), and 14(4) of the Law on Trade Unions so as to bring it into full conformity with the Convention. It requests the Government to provide information on all measures taken or envisaged in this regard.**

**Law on the National Chamber of Entrepreneurs.** The Committee had previously urged the Government to amend the Law on the National Chamber of Entrepreneurs, so as to eliminate all possible interference by the Government in the functioning of the Chamber and so as to ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan. The Committee recalls that the Law calls for the mandatory affiliation to the NCE (section 4(2)), and, during the transitional period to last until July 2018, for the Government's participation therein and its right to veto the NCE's decisions (sections 19(2) and 21(1)). The Committee further recalls from the DCM's report the difficulties encountered by the Confederation of Employers of Kazakhstan (KRRK) in practice, which stem from the mandatory membership and the NCE monopoly. The DCM noted in particular that the KRRK considered that the accreditation of employers' organizations by the NCE and the obligation imposed in practice on employers' organizations to conclude an annual agreement (a model contract) with the NCE, meant, for all intents and purposes, that the latter approved and formulated the programmes of employers' organizations and thus intervened in their internal affairs. While noting with **regret** that there are no immediate plans to amend the Law, the Committee welcomes the Government's request for the technical assistance of the Office in this respect. **In light of the above, and bearing in mind the serious concerns raised during the discussion of this Convention in the Conference Committee, the Committee urges the Government to take measures without further delay to amend the Law on the National Chamber of Entrepreneurs with the technical assistance of the Office.**

**Article 3. Right of organizations to organize their activities and to formulate their programmes.** *Labour Code.* The Committee had previously welcomed the intention of the Government to amend the Labour Code regarding the right to strike by making section 176(1)(1), pursuant to which, strikes shall be deemed illegal when they take place at entities operating hazardous production facilities, more explicit as to which facilities were considered to be hazardous. Currently, "hazardous production facilities" are listed in sections 70 and 71 of the Law on Civil Protection, and can be further determined, pursuant to Order No. 353 of the Minister of Investment and Development (2014), by the enterprise in

question. The Committee had noted from the DCM's report that the KNPRK had pointed out that legal strikes did not take place in Kazakhstan as: (i) almost any enterprise could be declared hazardous and the strike therein illegal; and (ii) requests to conduct a strike were submitted to the executive bodies and were denied in practice. The Committee notes that according to the Government, the abovementioned Concept Draft Legislation contains a provision aimed at making the Labour Code more explicit as to the situations where the strike is prohibited. ***The Committee expects that the necessary legislative amendments will be made in the near future, in consultation with the social partners and technical assistance of the Office, so as to address the outstanding concerns of the Committee regarding the right to strike. The Committee requests the Government to provide information on all measures taken or envisaged in this respect.***

The Committee notes with *concern* from the Conference Committee discussions and the information provided by the ITUC that trade union leaders have been convicted and sentenced in application of section 402 of the Criminal Code (2016), according to which an incitement to continue a strike declared illegal by the court was punishable by up to one year of imprisonment and in certain cases (substantial damage to rights and interest of citizens, etc.), up to three years of imprisonment. ***The Committee requests the Government to provide its comments thereon.*** It recalls 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 (see the 2012 General Survey on the fundamental Conventions, paragraph 158). ***The Committee requests the Government to take the necessary measures to amend section 402 of the Criminal Code so as to bring it into line with this principle. It requests the Government to indicate all measures taken or envisaged in this respect.***

*Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers.* The Committee had previously requested the Government to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift the ban on financial assistance to national trade unions and employers' organizations by an international organization. The Committee notes the Government's indication that the ban encompasses all financial and material assistance (cars, furniture, etc.) and is needed to safeguard the constitutional order, independence and territorial integrity of the country. The Committee recalls that while the DCM had noted there was no prohibition imposed on trade unions to participate in and carry out international projects and activities (seminars, conferences, etc.) together or with the assistance of international workers' organizations, it had considered that the legislation could be amended so as to make it clear that joint cooperation projects and activities could be freely carried out. ***The Committee therefore once again requests the Government to adopt, in consultation with the social partners, specific legislative provisions which clearly authorize workers' and employers' organizations to benefit, for normal and lawful purposes, from the financial or other assistance of international workers' and employers' organizations. It requests the Government to provide information on all measures taken or envisaged in this regard.***

*[The Government is asked to reply in full to the present comments in 2018.]*

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2001)***

*Scope of the Convention.* The Committee had previously requested the Government to take the necessary measures to amend its legislation so as to ensure that firefighters and prison staff enjoy the right to organize and to bargain collectively. In this respect, with reference to its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee notes the Government's indication that prison staff, as part of the law enforcement bodies, are placed under the responsibility of the Ministry of Interior and as such are prohibited from establishing and joining trade unions. The Committee had previously noted from the report of the direct contacts mission (DCM), which visited the country in September 2016 following a request to that effect by the Conference Committee on the Application of Standards in the framework of the application of Convention No. 87, that among the employees of the law enforcement bodies (which include prison staff and firefighters), only employees who have a military or police rank are prohibited from establishing and joining trade unions. The Committee notes that according to the Government and the information contained in the DCM report, all civilian staff engaged in law enforcement bodies can establish and join trade unions and that there are currently two sectoral trade unions representing their interests that can, according to the Government, exercise their right to collective bargaining. ***The Committee requests the Government to provide clarification on the trade union rights and rights to collective bargaining of prison staff and firefighters who have no military or police rank and to inform about any collective agreement covering them.***

*Article 4 of the Convention. Right to collective bargaining.* In its previous comments, the Committee had requested the Government to amend the Labour Code so as to ensure that where there exist in the same undertaking both a trade union representative and another representative elected by workers who are not members of any trade union, the existence of the latter is not used to undermine the position of the union in the collective bargaining process. The Committee notes that while it would appear that pursuant to the new Labour Code, which entered into force on 1 January 2016, other representatives are elected only in the absence of a trade union (sections 1(44) and 20(1)), the Government indicates in its report that workers who are not members of a trade union can either authorize a trade union to represent

their interests in collective bargaining or elect other representatives to that effect. The Committee recalls that 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 undermine the principle of the promotion of collective bargaining set out in the Convention (see the 2012 General Survey on the Fundamental Conventions, paragraph 239). ***The Committee requests the Government to clarify whether under the new model of collective bargaining provided for by the new Labour Code other representatives can bargain collectively alongside an existing trade union and, if this is the case, to amend the Labour Code so as to bring it into conformity with the Convention.***

The Committee had previously noted that pursuant to section 97(2) of the Code on Administrative Breaches (2014), an unfounded refusal to conclude a collective agreement is punishable by a fine and recalled in this respect that legislation which imposes an obligation to achieve a result, particularly when sanctions are used in order to ensure that an agreement is concluded, is contrary to the principle of free and voluntary negotiation. The Committee had requested the Government to repeal this provision and to indicate the measures taken in this respect. The Committee notes with *regret* that no information has been provided by the Government in this respect. ***The Committee therefore reiterates its previous request and expresses the hope that the Government's next report will contain information on the measures taken in this respect as well as information on the application of this provision in practice.***

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

## Kiribati

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2000)***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Articles 1 and 2. Adequate protection against acts of anti-union discrimination and interference. In order to enable it to assess whether adequate protection against acts of anti-union discrimination and interference is provided in practice, the Committee requests the Government to supply detailed information on the number of complaints of anti-union discrimination and employer interference brought to the various competent authorities, the average duration of the relevant proceedings and their outcome, as well as the types of remedies and sanctions imposed in such cases.*

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

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

## Kuwait

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)***

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in a communication received on 18 September 2017 referring to issues under examination by the Committee.

*Article 2 of the Convention. Migrant workers.* In its previous comments, the Committee had requested the Government to ensure the recognition of the right of migrant workers to establish and join organizations of their own choosing by repealing any restriction or requirement on account of work permit or time of residence. In this respect, the Committee takes note of the Government's indication in its report that the Labour Law (2010) does not contain any section that prohibits migrant workers from establishing organizations or from joining the existing trade unions. The Committee recalls that in its previous observation, it had noted the Government's indication that the right to establish organizations is not accorded to migrant workers due to the fact that their residence in Kuwait is temporary and ends at their contract's expiration. As to the right to join unions, the Committee recalls that it had noted that the admission of non-Kuwaiti workers as trade union members is provided for by the Ministerial Order No. 1 of 1964, which requires them to hold a work permit and to have resided in the country for five years. In this regard, the Committee notes the Government's indication that those requirements are merely organizational and are useful to determine if the workers concerned lawfully reside in the country and the type of occupation on the basis of which a request to join a trade union organization is made. The Committee observes that, according to the Central Statistical Bureau of Kuwait, approximately two-thirds of the population in Kuwait are non-Kuwaiti citizens. It further notes that according to statistics published on the website of the UN High Commissioner for Refugees (UNHCR), in 2010, there were at least of 93,000 Bidoons who were reportedly stateless people. The Committee recalls that 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 or the absence thereof. ***The Committee once again requests the Government to take all necessary measures to ensure the recognition of the right of all migrant workers to establish and join organizations of their own choosing,***

***repealing any restriction or requirement on account of work permit status or time of residence, and to provide information on any development in this respect.***

***Domestic workers.*** In its previous comments, the Committee had requested the Government to take all necessary measures to ensure the full recognition of the right of domestic workers to establish and join organizations. The Committee notes the Government's indication that Law No. 68 of 2015 on domestic workers grants labour rights to domestic workers and aims to improve their social and economic situation. It further observes that, according to the Central Statistical Bureau of Kuwait, in 2016, 666,422 persons were employed as domestic workers (which represents around 16.5 per cent of the population). While noting that Law No. 68 of 2015 constitutes a first step towards improving the protection of domestic workers, the Committee observes that this legislation does not contain any provision explicitly granting them the right to establish and join organizations to further and defend their interest and rights. ***The Committee urges the Government to take all necessary measures to ensure the full recognition and the right of domestic workers to establish and join organizations. It requests the Government to indicate all measures taken or envisaged in this regard.***

***Civil servants.*** The Committee had previously requested the Government to provide information on trade union rights in the public sector. The Committee notes the Government's indication that civil servants have the right to establish and join unions of their own choosing and that this right is guaranteed both in law and in practice. The Government reiterates that section 98 of the Labour Law covers civil servants and that there is no legislation that restricts or limits them from exercising full trade union rights. It transmits a list of trade unions set up in various Ministries and public institutions. The Committee takes due note of this information.

***Maritime and oil sector workers.*** The Committee had previously requested the Government to provide information on the exercise of trade union rights in the maritime and oil sector. The Government refers to a list of trade unions in the maritime and oil sector supplied with its report. The Committee takes due note of this information.

***Article 3. Financial administration of organizations.*** In its previous comments, the Committee had requested the Government to take the necessary measures to amend sections 104(2) and (3) of the Labour Law so as to bring it into conformity with *Article 3* of the Convention. The Committee notes the Government's indication that no restriction is imposed on the financial administration of trade unions. As concerns the prohibition on trade unions to use their funds in financial, real estate and other forms of speculations imposed by section 104(2) of the Labour Law, the Government indicates that the aim of this provision is to ensure the protection of union members from the negative consequences of such investments. The Committee recalls that legislative provisions that restrict the freedom of trade unions to administer, utilize and invest their funds as they wish for normal and lawful trade union purposes, including through financial and real estate investments, are incompatible with *Article 3* of the Convention, and that the control exercised by public authorities over trade union finances should not go beyond the requirements for the organization to submit periodic reports. ***The Committee therefore once again requests the Government to take the necessary measures to amend section 104(2) of the Labour Law and to indicate all measures taken or envisaged in this respect.*** In respect of section 104(3) of the Labour Law, the Committee takes due note of the Government's indication that this provision does not restrict trade unions from receiving money (donations and successions), but simply directs trade unions to inform the Ministry of the donations and successions received in order to verify the legitimacy of the source. The Committee understands that section 104(3) of the Labour Law does not indeed require the Ministry's consent.

***Overall prohibition on trade union political activities.*** In its previous comments, the Committee had requested the Government to take the necessary measures to revise section 104(1) of the Labour Law which prohibits trade unions from involvement in any political matters. The Government indicates that the involvement of trade unions in political issues is not one of the objectives for which trade unions are established. The Government reiterates that the trade unions' aim is to defend the interest of workers and to improve their economic and social situation, while the objective of any political party is to fight for a policy. The Government also indicates that unions can always express their views on political issues of interest to their members without any interference. The Committee recalls that the development of the trade union movement and the increasing recognition of its role as a social partner in its own right means that workers' organizations must be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy. ***The Committee once again requests the Government to take the necessary measures to amend section 104(1) of the Labour Law so as to eliminate the total ban on political activities in keeping with the abovementioned principle and so as to explicitly ensure that union members are able to express their views on policy matters that may affect their interest. It further requests the Government to indicate all progress made in this regard.***

***Compulsory arbitration.*** The Committee had previously noted that the intervention by the Ministry in labour disputes pursuant to sections 131 and 132 of the Labour Law could lead to compulsory arbitration and the prohibition of strikes. Noting the willingness of the Government to examine these provisions in consultation with the social partners, the Committee had requested the Government to provide information on the results of such tripartite consultations. The Committee notes the Government's indication that the aim of section 131 of the Labour Law is to grant intervention powers to the Minister in a case of a collective dispute. The Government points out that the exercise of this power is optional and not mandatory. It reaffirms that the Ministry has never intervened in any collective dispute and that it is committed to not intervening, unless the parties to the dispute request its intervention. The Committee once again recalls

that in as much as compulsory arbitration prevents strike action (section 132 of the Labour Law), it is contrary to the right of trade unions to freely organize their activities. Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. ***The Committee therefore once again requests the Government to take the necessary measures to amend sections 131 and 132 of the Labour Law so as to ensure their full conformity with the abovementioned principles, and to provide information on any developments in this respect.***

***Dismissal of executive boards.*** In its previous comments, the Committee had noted that section 108 of the Labour Law provides for the possibility to dismiss an organization's board of directors by court order in case the board engages in an activity that either violates the provisions of the Labour Law or of the "laws relevant to the preservation of public order and morals". The Committee also had pointed out that the reference, as grounds for board dismissal, to any activity that violates the laws relevant to the preservation of the public order and morals is too broad and vague, and could lead to an application that hinders the exercise of the trade union rights enshrined in the Convention. Furthermore, the Committee had considered that the dismissal of the executive boards of employers' or workers' organizations by court order should be restricted to serious and repeated violations of the organizations' constitutions or of relevant legislation, and recalls that legislation cannot impair nor be applied to impair the guarantees provided for in the Convention. The Committee notes that no information has been provided by the Government in this respect. ***It therefore once again requests the Government to take the necessary measures to amend section 108 of the Labour Law and to indicate all progress made in this respect.***

***Article 5. Limitation to a single confederation.*** In its previous comments, the Committee had requested the Government to take the appropriate measures to amend section 106 of the Labour Law, which provides that "there should not be more than one general union for each of the workers and employers", so as to ensure the right of workers and employers to establish organizations of their own choosing at all levels. The Committee notes that the Government did not provide any information on the measures to amend section 106 of the Labour Law. Once again, the Committee recalls that 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 unions or to establish a new union for reasons of independence, effectiveness or ideological choice. Consequently, legislation which requires trade unions to be grouped together in a single federation or confederation raises problems of compatibility with the Convention. The Committee notes with *regret* the lack of progress in this regard and recalls that a legislatively imposed trade union monopoly at any level is incompatible with the requirements of the Convention. ***The Committee once again requests the Government to take the appropriate measures to amend section 106 of the Labour Law so as to ensure the right of workers to establish organizations of their own choosing at all levels, including the possibility of forming more than one confederation (general union), and to provide information on any developments in this respect.***

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

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2007)***

The Committee notes the observations of the International Trade Union Confederation (ITUC) in a communication received on 18 September 2017, which refer to issues pending before this Committee.

***Scope of application of the Convention.*** In its previous comments, the Committee had requested the Government to provide information on the way in which domestic workers and migrant workers exercise in practice their rights enshrined in the Convention. The Committee notes the Government's indication that, under Kuwaiti legislation, workers have the prerogative to organize, form and become members of unions. The Government refers to Ministerial Order No. 1 of 1964, which is based upon article 43 of the Constitution, and provides that no person may be compelled to join any association or union. In this respect, the Committee notes that Ministerial Order No. 1 of 1964 subordinates the exercise of this right to the possession of a valid work permit and a minimum of five years' residence in the country. With respect to domestic workers, the Committee notes the Government's indication that Law No. 68 of 2015 on domestic workers grants labour rights to domestic workers and aims to improve their social and economic situation. While acknowledging that Law No. 68 of 2015 constitutes a first step towards improving the protection of domestic workers, the Committee observes that this legislation does not contain any provision explicitly granting them the right to organize and negotiate collective agreements. In this respect, the Committee refers to its observations made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). ***The Committee requests the Government to take all necessary measures to ensure the full recognition, in law and in practice, for all migrant workers and domestic workers of the rights enshrined in the Convention. It also requests the Government to continue providing information on the way in which domestic workers and migrant workers exercise in practice the rights set out in the Convention, including information on trade union organizations established and collective agreements in force.***

***Articles 1 and 2 of the Convention. Adequate protection against acts of anti-union discrimination and interference.*** In its previous comments, the Committee had requested the Government to take any necessary measures to ensure that

legislation provides for the prohibition of all acts of anti-union discrimination and interference forbidden by the Convention as well as redress mechanisms which ensure an adequate protection. In this respect, the Committee takes note of the Government's indication that it is forbidden for employers to terminate a contract for any reason connected to fundamental rights provided in the Constitution and international Conventions, which have determined the right of workers to join labour unions and exercise trade union rights. The Government reiterates that Kuwait's Constitution provides in article 43 that no person may be compelled to join any association or union and that the Labour Law provides that a worker's service may not be terminated without justification or on the grounds of union activity. The Committee recalls that, beyond these general provisions, national legislation does not provide for concrete protection against acts of discrimination. It also recalls that this protection should prohibit not only dismissals but also other measures of anti-union discrimination, such as transfers, demotions and any other prejudicial acts, as well as acts of anti-union discrimination in taking up employment. Furthermore, it recalls that legislation should provide protection against all acts of interference, such as acts aiming to place workers' organizations under the control of employers or employers' organizations by financial or other means. The Committee emphasizes that legislation should make express provision for effective procedures and dissuasive sanctions to prevent and redress all acts of anti-union discrimination and to protect employers' and workers' organizations against interference by each other. ***The Committee urges the Government once again to take all necessary measures to ensure that the legislation provides for the prohibition of all acts of anti-union discrimination and interference forbidden by the Convention, as well as to ensure that there are redress mechanisms which provide adequate protection, including effective procedures and dissuasive sanctions, in accordance with the abovementioned principles.***

*Article 4. Promotion of collective bargaining. Compulsory arbitration.* The Committee had previously noted that pursuant to sections 131 and 132 of the Labour Law, the Ministry may intervene in a dispute without being asked to do so by any of the disputing parties, to bring about an amicable settlement of the dispute, and may also refer the dispute to the Conciliation Committee or the Arbitration Panel, as it deems appropriate. The Committee notes the Government's indication that the aim of section 131 of the Labour Law is to grant intervention powers to the Minister in a case of a collective dispute. The Government reiterates that the exercise of this power is optional and not mandatory. It reaffirms that the Ministry has never intervened in any collective dispute and that it will be committed thereto in the future, unless the parties to the dispute request its intervention. The Committee recalls that compulsory arbitration in the framework of collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term (services whose interruption would endanger the life, personal safety or health of the whole or part of the population), and acute national crises. The Committee refers to its observation made under Convention No. 87, and emphasizes that even if section 131 is optional, the provision unduly affords the Ministry discretion to provide for compulsory arbitration beyond the acceptable cases previously mentioned. ***The Committee urges the Government once again to take all necessary measures to amend sections 131 and 132 of the Labour Law, as well as other provisions on compulsory arbitration concerned, to ensure the full conformity with the abovementioned principles, and to provide information on any developments in this respect.***

*Promotion of collective bargaining. Application of the Convention in practice.* In its previous comments, the Committee had requested the Government to provide information concerning the number of collective agreements concluded, specifying the sectors and the number of workers covered. The Committee notes the Government's indication that it has not been informed of any collective agreements during the period covered by its report, and that the last collective agreement was concluded in 2011. The Committee recalls that according to *Article 4* of the Convention, governments shall promote collective bargaining between employers and trade union organizations, and notes with **concern** that no collective agreement has been concluded since 2011. ***The Committee therefore requests the Government to provide information on concrete measures taken or contemplated in order to encourage and promote collective bargaining. The Committee also requests the Government to continue providing information concerning the number of collective agreements concluded, specifying the sectors and the number of workers covered.***

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

## Lesotho

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

*Article 3 of the Convention. Right of workers' and employers' organizations to organize their activities and formulate their programmes.* The Committee had previously noted that section 198F of the Labour Code grants specific advantages to trade unions representing more than 35 per cent of employees, and that section 198G(1) of the Labour Code provides that only members of registered trade unions representing more than 35 per cent of the employees in enterprises employing ten or more employees were entitled to elect workplace union representatives. The Government had indicated that the issue would be examined by the National Advisory Committee on Labour which was working on a reform of the labour legislation. The Committee had trusted that the Government would ensure, through the reform of the labour legislation, that the distinction between most representative and minority unions did not result in granting privileges that would unduly influence workers' free choice of organization. The Committee **regrets** that no information has been

provided by the Government in its report in this respect and recalls that workers' freedom of choice may be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in granting privileges such as to influence unduly the choice of organization by workers. The Committee further recalls that 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). ***The Committee requests the Government to take measures, including in the context of the ongoing labour law reform, to ensure that the distinction between most representative and minority unions does not result, in law or in practice, in granting privileges that would unduly influence workers' free choice of organization. It requests the Government to provide information on all progress made in this respect.***

*Articles 2, 3 and 5. Public officers' associations.* In its previous comments, the Committee had requested the Government to indicate if public officers' associations were subject to the obligations requiring a registered society to supply to the Registrar-General, upon his or her order at any time, a list of office bearers and members of the society, the number and place of meetings held within the preceding six months, and such accounts, returns and other information as he or she thinks fit (section 14(1)(b), (c) and (d) of the Societies Act), or whether they fall within the exception of section 14(2) of the Societies Act (which provides that the Registrar-General shall not order a political association to furnish its minutes, information on its meetings, accounts, correspondence or lists of its members, except to the extent that is necessary to ascertain the constitution, rules and office bearers of that association). In addition, the Committee expressed the hope that measures would be taken to ensure that public officers under the Public Service Act were able to establish and join federations and confederations, and affiliate with international organizations.

The Committee notes the Government's indication that public officers' associations are not exempted under section 14(2) of the Societies Act. However, the Committee also notes the Government's indication that, in the context of discussions between the Ministry of Labour and Employment and the Ministry of Public Service concerning possible legislative amendments, the Ministry of Public Service's Strategic Plan for 2016–19 has been endorsed by the Cabinet. It notes with *interest* that the Strategic Plan includes amending the Public Service Act to accommodate trade unionism, under priority 6 concerning the enhancement of public officers' welfare, with a projected time frame of April to July 2017 for start and completion dates. It further notes the Government's indication that the Ministry of Labour and Employment has successfully developed a draft Labour Policy, which will be tabled in the Cabinet. The draft Policy underlines the application of international labour standards to all workers across sectors, including public servants, and the Government indicates that accordingly, the rights under the Convention will be enjoyed by public servants. ***The Committee welcomes this explanation and requests the Government to pursue its efforts to amend the Public Service Act to ensure organizations of public officers are not subject to the obligations outlined in section 14(1)(b), (c) and (d) of the Societies Act, and that their supervision is limited to the obligation of submitting periodic financial reports or where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law. It further firmly hopes that the Government will take the necessary measures to ensure that public officers are able to establish and join federations and confederations, and affiliate with international organizations. It requests the Government to provide information on developments in this regard, including any legislation adopted in this respect.***

***The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1966)***

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 that are addressed under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Article 4 of the Convention. Promotion of collective bargaining. Recognition of the most representative union.* The Committee previously noted that section 198A(1)(b) of the Labour Code defines a representative trade union as a "registered trade union that represents the majority of the employees in the employ of an employer", and that section 198A(1)(c) specified that "a majority of employees in the employ of an employer means over 50 per cent of those employees". It recalled that if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members. The Government indicated in that respect that the ongoing consolidation of labour legislation would include the issues raised by the Committee.

The Committee notes the Government's statement that in the current process of revision of the labour legislation, there is an introduction of the concept of organizational rights as opposed to bargaining rights. The Government indicates that regulations on organizational and bargaining rights are anticipated upon completion of the labour law reform. The Committee notes in this regard that the drafting instructions for the 2016 consolidation and revision of the Labour Code highlight the Committee's previous request in this respect, and state that the revised Code should provide for bargaining rights in the scenario where unions are sufficiently representative but there is an absence of any union with a more than 50 per cent membership. The Committee recalls that the determination of the threshold of representativeness to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a

sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. *The Committee requests the Government to take the necessary measures in the context of the labour law reform to ensure that if there is no union that reaches the required majority to be designated as the collective bargaining agent, minority unions should be given the possibility to bargain collectively, jointly or separately, at least on behalf of their own members. It requests the Government to provide information on measures taken in this respect, and to provide a copy of any legislation or subsequent regulations adopted.*

*Representativeness requirements for certification of a union as the exclusive bargaining agent.* The Committee previously noted that section 198B(2) of the Labour Code provides that the arbitrator may conduct a ballot “if appropriate” in the determination of disputes concerning trade union representativity. In that respect, it trusted that disputes which required the holding of a vote to determine which trade union was most representative would be disposed of by means of a ballot. It further recalled that new organizations, or organizations with a sufficiently large number of votes, should be able to ask for a new election after a reasonable period has elapsed since the previous election.

In this respect, the Committee notes that the drafting instructions for the 2016 consolidation and revision of the Labour Code refer to the introduction of a formal requirement for ballots to be held in determining trade union representativeness, removing the arbitrator’s discretion as to whether a ballot is appropriate. *The Committee requests the Government to pursue its efforts to ensure that, in the context of the labour law reform, disputes which require the holding of a vote to determine which trade union is most representative are in fact disposed of by means of a ballot. Additionally, the Committee requests the Government to take the necessary measures to amend the Labour Code so as to ensure that new organizations, or organizations failing to secure a sufficiently large number of votes, may ask for a new election after a certain period has elapsed since the previous election.*

*Collective bargaining in the education sector.* The Committee previously requested information on any collective bargaining agreements reached for teachers in the public and private sectors. In this regard, the Committee notes the Government’s indication that drafting instructions have been submitted to the Office of Parliamentary Counsel for drafting concerning the amendment of the Education Act in order to bring it into conformity with the rights enshrined in the Convention. It notes in this respect that the drafting instructions for the 2016 consolidation and revision of the Labour Code identify that, with regard to changes required in respect of other pieces of legislation, the Education Act should be clarified to state that teachers enjoy collective bargaining rights. In addition, with respect to the public sector, the Committee notes the Government’s reference to section 64 of the Education Act of 2010, which provides that a teacher has a right to form or become a member of any teacher formation, and that a teachers’ formation representing more than 40 per cent of practising teachers may apply for recognition to the Minister. With respect to the private sector, the Government indicates that the rights of teachers in that sector to form and to join trade unions are also protected by section 64 of the Education Act and the Labour Code (Amendment) Act No. 1 of 2010, and that collective bargaining is permissible provided that the required threshold is achieved. The Government further indicates that teacher formations are consulted for concerted decisions every time the Ministry of Education has an issue that concerns its members. *The Committee requests the Government to provide information on the amendment to the Education Act aimed at bringing the Act into conformity with the Convention and to, in the context of this revision, take into account the Committee’s above indications concerning the need to ensure that if there is no union that reaches the required threshold to be designated as the collective bargaining agent, minority unions should be given the possibility to bargain collectively, jointly or separately, at least on behalf of their own members. In the meantime, the Committee requests the Government to provide information on the application of section 64 of the Education Act in practice, including the number of teachers’ associations that have applied to the Minister for recognition, the number of associations recognized, and the rights accompanying such recognition. The Committee once again requests the Government to indicate if any collective bargaining agreements have been reached with teachers in the public and private sectors, and if so, to provide details of such agreements. Lastly, it once again requests the Government to provide a copy of the Labour Code (Amendment) Act No. 1 of 2010.*

## Liberia

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning issues that have been raised since 2012 and which are examined in the present observation, as well as matters that are being dealt with by the Committee on Freedom of Association in the framework of Cases Nos 3081 and 3202.

*Legislative developments.* The Committee recalls that for many years it has been commenting on the need to amend or repeal the following provisions of Title 18 of the Labour Act, which are not in conformity with the Convention: (i) section 4506, prohibiting workers in state enterprises and the public administration from establishing trade unions; (ii) section 4601-A, prohibiting agricultural workers from joining industrial workers’ organizations; and (iii) section 4102(10) and (11), providing for the supervision of trade union elections by the Labour Practices Review

Board. The Committee notes with *satisfaction* that, as indicated by the Government in its report, Title 18 of the Labour Practices Law has been repealed by the Decent Work Act 2015 (the Act) which came into force on 1 March 2016. The Committee wishes to raise the following points with respect to the Act.

*Scope of application.* The Committee notes that section 1.5(c)(i) and (ii) of the Act excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee recalls, in this respect, that in its previous comment, it had noted the Government's indication that the legislation guaranteeing the right of public employees to establish trade unions (the Public Service Ordinance) was being revised with the technical assistance of the Office. The Committee notes that no new information has been provided by the Government in that respect. ***The Committee expects that the revision of the Ordinance will make it possible to give full effect to the Convention in relation to public employees and requests the Government to report any developments in this regard.***

The Committee notes that section 1.5(c)(i) and (ii) of the Act also excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. ***Noting that no information has been provided by the Government on the legislation guaranteeing the right to establish and join organizations to those working on vessels, the Committee requests the Government to indicate how maritime workers, including trainees, are ensured the rights enshrined in the Convention, including any laws or regulations adopted or envisaged covering this category of workers.***

*Article 1 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations.* The Committee notes that section 2.6 of the Act provides that all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing without prior authorization, and subject only to the rules of the organization concerned. The Committee also notes that section 45.6 of the Act recognizes the right of foreign workers to join organizations. ***The Committee requests the Government to indicate whether, in addition to the right to join organizations, foreign workers are entitled to establish organizations of their own choosing.***

*Article 3. Determination of essential services.* The Committee notes that the National Tripartite Council (established by virtue of section 4.1 of the Act) has the function to identify and recommend to the Minister services that are to be considered essential (section 41.4(a) of the Act). The Committee notes with *interest* that essential services are defined in section 41.4 of the Act as services which, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population. The section also provides that the President shall, upon considering the recommendations of the National Tripartite Council, decide whether or not to designate any part of a service as an essential service and publish a notice of designation of that essential service in the *Official Gazette*. The Committee notes that the final decision on the determination of a service as essential rests with the President, who is neither bound by nor obliged to follow the recommendations of the National Tripartite Council. ***The Committee requests the Government to indicate whether, in determining services which are to be considered essential, the President is bound by the definition of essential services set out in section 41.4 of the Act. The Committee also requests the Government to provide information on how section 41.4 has operated in practice with respect to the designation of essential services.***

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning issues examined in the present observation as well as matters that are being dealt with by the Committee on Freedom of Association in the framework of Cases Nos 3081 and 3202.

*Legislative developments.* The Committee notes the Government's indication that the Decent Work Act adopted in 2015 came into force on 1 March 2016 and that it ensures the rights enshrined in the Convention. The Committee recalls that for many years it has been commenting on the need to adopt legal provisions guaranteeing: (i) adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions; (ii) adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and (iii) the right to collective bargaining for employees in state-owned enterprises and public servants who are not engaged in the administration of the State.

*Scope of the Convention.* The Committee notes that section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 (the Act) excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee recalls, in this respect, that in its previous report, the Government had indicated that the legislation guaranteeing the right of collective bargaining of public servants and employees in state enterprises (Ordinance on the public service) was under revision with the technical assistance of the Office. The Committee notes that no information has been provided by the Government in that respect. ***The Committee expects that the revision of the Ordinance on the public service will make it possible to give full effect to the Convention in relation to employees in state enterprises and public servants not engaged in the administration of the State and requests the Government to report any developments in this regard.***

The Committee notes that section 1.5(c)(i) and (ii) of the Act also excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. ***Noting that no information has been provided by the Government on legislation guaranteeing the right of collective bargaining to maritime workers, the***

**Committee requests the Government to indicate how the rights enshrined in the Convention apply to these workers, including any laws or regulation, adopted or envisaged, covering them.**

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* The Committee recalls that for many years it has been requesting the Government to take measures to introduce in the legislation provisions that would ensure an effective protection against anti-union discrimination. The Committee notes that section 2.6 of the Act provides that the right to form organizations and to bargain collectively are fundamental rights and that section 2.7 prohibits discrimination in the exercise of the rights conferred by the Act. The Committee also notes that section 2.11 of the Act provides for the protection of workers' freedom of association (stipulating, inter alia, that no person may prejudice or threaten to prejudice a worker because of past, present or anticipated membership of an organization of workers) and that section 2.12 of the Act provides for the protection of employers' freedom of association. The Committee notes that sections 2.11 and 2.12 provide that they operate in addition to, and to the fullest extent possible together with section 2.7 of the Act, under which discrimination overall is prohibited. The Committee notes that, while the Act does not expressly prohibit termination of employment based on anti-union discrimination, section 14.8 prohibits termination because of the exercise of rights conferred by the Act. It also notes that complaints for the violation of the rights guaranteed in the Act can be lodged to the Ministry and that the Ministry's decisions can be appealed before the Labour Court (Chapters 9 and 10 of the Act). **Emphasizing the importance of ensuring effective protection against acts of anti-union discrimination and of providing for sufficiently dissuasive sanctions in this regard, the Committee requests the Government to provide further information on the sanctions applied in cases of acts of anti-union discrimination. It also requests the Government to provide statistics on the number of cases of discrimination examined, the duration of the procedures and the type of penalties and compensation ordered.**

*Article 2. Adequate protection against acts of interference.* The Committee recalls that for many years it has been requesting the Government to take measures to introduce in the legislation provisions guaranteeing adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions. The Committee notes with **regret** that the Act still contains no specific provisions on protection against interference. The Committee recalls that 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 (see the 2012 General Survey on the fundamental Conventions, paragraph 194). **The Committee requests the Government to take the necessary measures to introduce in the legislation a prohibition of acts of interference as well as rapid appeal procedures and dissuasive sanctions against such acts. It requests the Government to report on any development in this regard.**

*Article 4. Promotion of collective bargaining.* The Committee notes that section 37.1(a) of the Act provides that trade unions that represent the majority of the employees in an appropriate bargaining unit are able to seek recognition as exclusive bargaining agents for that bargaining unit. It also notes that a trade union that no longer represents the majority of the employees in the bargaining unit must acquire majority within three months, if not, the employer shall withdraw recognition from that trade union (section 37.1(k)). The Committee recalls that 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, it 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 (see General Survey, op. cit., paragraph 226). **The Committee requests the Government to indicate whether, if no union represents the majority of the employees in an appropriate bargaining unit, the minority unions in the same unit enjoy collective bargaining rights, at least on behalf of their members.**

*Settlement of disputes affecting national interest.* The Committee notes that section 42.1 of the Act provides that if the President considers it in the national interest, the President may: (i) request the Minister to appoint a conciliator to conciliate any dispute, or potential dispute, between employers and their organizations on the one hand and employees and their trade unions on the other hand; or (ii) in consultation with the National Tripartite Council, appoint a panel of persons representing the interests of employers, employees and the State to investigate any industrial conflict or potential conflict for the purpose of reporting and making recommendations to the President. **Recalling that, pursuant to Article 4 of the Convention, the settlement of collective disputes must be consistent with the promotion of free and collective bargaining, the Committee requests the Government to provide additional information with respect to the prerogatives under section 42.1 of the Act, and to indicate the extent to which this provision provides the parties with complete freedom of collective bargaining and does not alter the principle of voluntary arbitration.**

## Madagascar

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) and of the Confederation of Malagasy Workers (CTM), received on 25 September and 26 October 2017, respectively, on the application of the Convention in practice, and notes the Government's comments in this regard. The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 20 September 2017,

containing allegations of restrictions on the right to organize, and especially the right of trade unions to organize their management and training activities, and also on the difficulties encountered in establishing trade unions. **The Committee requests the Government to provide its comments on the observations of SEKRIMA.**

*Restrictions on trade union activities in the maritime sector.* In its previous comments, the Committee urged the Government to ensure that the independent inquiry conducted into anti-union acts in the maritime sector is concluded as soon as possible. The Committee notes that no information has been provided by the Government in this regard. **The Committee therefore reiterates its previous request and once again urges the Government to ensure that the independent inquiry is concluded as soon as possible and to communicate the findings thereof.**

### Legislative matters

*Article 2 of the Convention. Workers governed by the Maritime Code.* In its previous comments, the Committee noted that a new Maritime Code was to be adopted and hoped that the right of seafarers to establish and join trade unions would be recognized. The Committee notes the Government's indication that a roadmap on the adoption of the Maritime Code has been established and received the approval of the tripartite partners. The Committee also notes that a plan of action has been adopted to put into practice the efforts of the Malagasy Government to comply with the provisions of the Convention, and that the Maritime Code that will soon be adopted will take this plan into account. **The Committee requests the Government to provide information on any progress achieved in this regard and to provide a copy of the Maritime Code as proposed or adopted, and to ensure that the Code establishes the right of seafarers to establish and join trade unions.**

*Article 3. Representativeness of workers' and employers' organizations.* In its previous comments, the Committee noted the adoption of Decree No. 2011-490 on employers' and workers' organizations and representativeness and asked the Government to provide information on its application and its impact on the determination of the employers' and workers' organizations that participate in social dialogue at the national level. The Committee notes the Government's indication that the Decree is to be implemented in several phases, the first of which is the holding of elections for staff delegates at the enterprise level. The Committee notes that, according to the Government, the election process began in 2014, but was slowed down by the adoption of Order No. 34-2015 on the determination of trade union representativeness, as an appeal was lodged to set aside the result of the elections. The Committee notes the Government's indication that, in early 2017, the Council of State (CE) issued a decision rejecting the appeal, and that the process to determine representativeness was relaunched. Moreover, the Committee notes the Government's indications that a tripartite meeting on the issues of representativeness and the composition of the National Labour Council (CNT) was held on 10 November 2017. Lastly, the Committee notes that a new ministerial order (Decree No. 2017-843), which envisages the optimization of the CNT and tripartite labour councils with a view to facilitating the determination of employers' and workers' representativeness, has been adopted. **The Committee requests the Government to provide information on any progress made in the election of staff delegates at the enterprise level and on the application and impact from such election in the determination of the employers' and workers' organizations that participate in dialogue at the national level.**

*Right of workers' organizations to organize their activities and formulate their programmes. Compulsory arbitration.* In its previous comments, the Committee requested the Government to take all necessary measures to amend sections 220 and 225 of the Labour Code, which provide that if mediation fails, the collective dispute is referred by the Minister of Labour and Social Legislation to a process of arbitration and that the arbitral award ends the dispute and the strike. The Committee recalled that, in a collective dispute, a compulsory arbitration order is acceptable only where strikes may be prohibited, namely in the case of public servants exercising authority in the name of the State, in essential services in the strict sense of the term and in the event of an acute national crisis. The Committee also asked the Government to take the necessary measures to amend section 228 of the Labour Code on the requisitioning of striking employees, so as to replace the concept of the disruption of public order by the concept of acute national crisis. The Committee notes the Government's indication that a compilation of the Committee's observations, in relation to the requested legislative amendments, has been made so that it can be transmitted to the CNT for examination and adoption. **The Committee encourages the Government to take all the necessary measures to amend sections 220 and 225 of the Labour Code on arbitration, as well as section 228 of the Labour Code on requisitioning, in order to bring them into conformity with the above principles, and to provide information on any progress made in this regard.**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)**

The Committee notes the observations made by the International Trade Union Confederation (ITUC) and the Christian Confederation of Malagasy Trade Unions (SEKRIMA) in communications received on 1 and 4 September 2017, respectively, concerning points being examined by the Committee and, according to SEKRIMA, new acts of anti-union discrimination in various sectors (telecommunications, banking, textiles, the salt industry and fishing). The Committee also notes the Government's comments in reply to the observations made by SEKRIMA in 2015 and by the ITUC in 2015 and 2017. With regard to allegations of anti-union dismissals in the mining sector, the Government indicates that the Council of State of the Supreme Court, in a judgment dated 9 December 2015, ruled in favour of the trade union leader Barson Rakotomanga, suspending implementation of the decision by the Minister for the Public Service, Labour and Social Legislation opposing his reinstatement in the enterprise; and that in other cases the Antananarivo Labour Court

ruled that the dismissals of trade union activists were procedurally flawed and therefore gave entitlement to the payment of damages. With regard to another case concerning the situation of two workers at a Malagasy mattress manufacturing company, the Government refers to intervention by the competent services of the labour administration and inspectorate, which resulted in amicable termination of the employment contract in one case and reinstatement in the company in the other case. ***Emphasizing the persistence of allegations of anti-union discrimination in numerous sectors, the Committee requests the Government to continue sending information on this matter. The Committee also requests the Government to ensure that all the events reported are the subject of investigation by the public authorities and, if acts of anti-union discrimination are proven, that these will give rise to full compensation for the damage suffered, in both occupational and financial terms, and to the imposition of penalties that constitute an effective deterrent.***

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee asked the Government to provide information on the number of cases of anti-union discrimination examined by the labour inspection services and labour courts, and on the corresponding penalties actually applied by these institutions. The Committee notes the Government's indications that the Ministry of Labour has taken steps to direct the activities of the Regional Labour Services (SRT) to enable the collection of the required data. In this regard, it notes that a suitable report template taking account of data on cases of anti-union discrimination is being prepared by the Inspection Support Service at the Directorate for Labour and Social Legislation and that the reports drawn up in relation to this template will be compiled centrally every six months from 2018 onwards, with a view to analysing them and setting up a database containing reliable information. ***The Committee hopes that the Government will soon be a position, as a result of these new tools, to provide information on the number of cases of anti-union discrimination examined by the labour inspectorate and the labour courts, and also on the corresponding penalties actually applied by the aforementioned bodies.***

*Articles 1, 2, 4 and 6. Public servants not engaged in the administration of the State.* The Committee recalls that its previous comments were concerned with 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 against acts of anti-union discrimination and interference and their right to bargain collectively their conditions of employment. The Committee noted the Government's indication that contractual public employees, governed by Act No. 94-025 of 17 November 1994, are not covered by specific provisions relating to acts of anti-union discrimination or interference or the right to bargain collectively. The Committee notes that, according to the Government, the recommended measures will be taken into account in the context of the future National Public Service Policy (PNFOP) and the revision of the legal framework governing the public service, including texts concerning civil servants and contractual public employees (Act No. 2003-011 of 3 September 2003 issuing the general conditions of service of public servants and Act No. 94-025 of 17 November 1994 issuing the general conditions of service of contractual public employees). ***While noting this information, the Committee expects that the Government will be in a position in the near future to provide information on the measures taken to clearly recognize the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti-union discrimination and interference and their right to bargain collectively their conditions of employment. The Committee reminds the Government that it may avail itself of technical assistance from the Office in this regard.***

*Article 4. Promotion of collective bargaining. Representativeness criteria.* With regard to the implementation of the representativeness criteria determined by Decree No. 2011-490 on trade unions and representativeness, the Committee notes the Government's indication that an appeal was lodged seeking the cancellation of Order No. 34/2015 determining trade union representativeness for 2014–15. In this regard, the Committee refers to its observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Collective bargaining in sectors subject to privatization.* The Committee notes the information provided by the Government on the situation of collective agreements in the energy sector, particularly that of the Malagasy Electricity and Water Company (JIRAMA), the revision of which is reportedly in progress. It notes that information on the Télécom Malagasy (TELMA) company will be provided in due course. The Committee further notes that, according to SEKRIMA, collective bargaining in privatized sectors continues to pose problems, in that the privatization operations have resulted in the collective agreements in force being discarded. ***Recalling 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, the Committee requests the Government to take all necessary steps to promote the full use by the parties concerned of collective bargaining mechanisms in privatized sectors. The Committee hopes that the Government will be in a position in the very near future to report tangible progress in this regard.***

*Collective bargaining for seafarers.* In its previous comments, the Committee noted that the Labour Code excluded maritime workers from its scope of application and requested the Government to take the necessary measures to ensure the adoption of specific provisions guaranteeing the collective bargaining rights of seafarers governed by the Maritime Code. The Committee notes the Government's reference to a roadmap relating to the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), and to the adoption of the Maritime Code due in May 2018. ***The Committee expects that the Government will be able to report, in the near future, the adoption of the new Maritime Code and that this Code will make provision for maritime workers to enjoy the rights guaranteed by the Convention.***

*Promotion of collective bargaining in practice. Further to its previous requests, the Committee requests the Government to provide information on the number of collective agreements concluded in the country, including in enterprises employing fewer than 50 workers, the sectors concerned and the number of workers covered by these agreements.*

## Malawi

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

The Committee notes that the Government's report has not been received. It notes nonetheless the Government's response to the 2014 observations of the International Trade Union Confederation (ITUC) which refer to the matters examined by the Committee.

*Article 3 of the Convention. Right of organizations to freely organize their activities and formulate their programmes.* In its previous comments, the Committee had requested the Government to provide information on any development concerning the establishment and composition of the subcommittee of the Tripartite Labour Advisory Council and the advancement of its work on the review of the final version of the Labour Relations (Amendment) Bill (LRA Bill), notably with regard to the establishment of the list of essential services, as well as to transmit the final version of the LRA Bill. The Committee notes that in its reply to the ITUC's observations, the Government indicates that, preliminary work being concluded, the process of the drawing up of a list of essential services is now under way, and that the social partners have been asked to consult their constituents, after which a tripartite meeting will be convened to agree on the list. ***The Committee requests the Government to indicate the outcome of the tripartite meeting and expects that the list of essential services will be limited to those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and that adequate protection will be afforded to the affected workers so as to compensate for the restrictions imposed on their freedom of action. The Committee requests the Government to transmit the final version of the LRA Bill.***

*Article 4. Dissolution or suspension of organizations by administrative authority.* The Committee previously referred more than once to the need to amend section 18(4) of the LRA Bill which provides that if an organization fails to comply with the provisions of subsection (1) (which require an organization to annually submit audited financial statements, a list of the names and postal addresses of its officers, and its number of members) after being given a reasonable opportunity to do so, the Registrar may suspend and even cancel the registration and certificate of an organization. The Committee had furthermore noted that section 18(4) and (5) provides that the Registrar may suspend and even cancel the registration and certificate of an organization which fails to comply with the requirements of section 18(1) and had noted, in this connection, that section 18(6) of the LRA Bill provides that an organization may appeal against a decision of the Registrar to suspend or cancel its registration and certificate of registration. The Committee had requested the Government to indicate: (i) whether an organization's appeal has the effect of suspending the administrative decision, pending the issuance of a final decision by the judiciary; and (ii) whether the judiciary, upon hearing an appeal, is able to deal with the substance of the case and to decide whether or not the provisions pursuant to which the administrative measures in question were taken constitute a violation of the rights guaranteed by the Convention. The Committee had considered that in the event that either of these judicial safeguards against dissolution is not provided for, the Government should take the necessary measures to amend section 18(4), (5) and (6) of the LRA Bill so that measures of dissolution of trade union organizations only occur in extremely serious cases and following a judicial decision. ***In the absence of any new information, the Committee reiterates its previous request and expects that the Government will take whatever measures are necessary to bring section 18(4), (5) and (6) into conformity with the Convention.***

## Malaysia

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning legislative matters and allegations of anti-union discrimination, including anti-union dismissals and non-recognition of unions. ***The Committee requests the Government to provide its comments in this respect, as well as to the allegations of specific violations of the Convention in practice made by the ITUC in 2016.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2016.

#### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)***

The Committee takes note of the discussion held in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2016 on the application of the Convention by Malaysia. It notes that the Conference Committee requested the Government to: (i) provide further detailed information regarding the announced repeal of section 13(3) of the Industrial Relations Act 1967 (IRA) on the limitations with respect to the scope of collective bargaining; (ii) report in detail

on the holistic review of the national labour legislation described above to the next meeting of the Committee of Experts in November 2016; (iii) ensure that public sector workers not engaged in the administration of the State may enjoy their right to collective bargaining; (iv) provide detailed information on the scope of bargaining in the public sector; (v) review section 9 of the IRA in order to guarantee that the criteria and procedure for union recognition are brought in line with the Convention; (vi) undertake legal and practical measures to ensure that remedies and penalties against acts of anti-union discrimination are effectively enforced; and (vii) ensure that migrant workers are able to engage in collective bargaining in practice. The Committee notes that the Conference Committee further called upon the Government to avail itself of the technical assistance of the Office with a view to implementing its recommendations and ensuring that its law and practice are in compliance with the Convention.

The Committee takes note of the information provided by the Government to the Conference Committee in June 2016 as to the outcome of the judicial proceedings concerning matters raised in the observations of the World Federation of Trade Unions (WFTU) and the National Union of Bank Employees (NUBE) of 2014. The Committee further notes the information provided by the Government to the Conference Committee on the observations of the ITUC and the Malaysian Trades Union Congress (MTUC) of 2015, including the Government's indication, as to allegations of anti-union discrimination and interference, that out of eight complaints raised by the MTUC, three had been resolved and five were pending before the Industrial Court or the relevant authority, and that the Government would submit detailed comments in writing. ***The Committee requests the Government to provide such comments concerning these allegations.***

With regard to the holistic review announced by the Government on the main labour laws (including the Employment Act, 1955, the Trade Unions Act, 1959 and the IRA), the Committee welcomes the Government's indication that it is in the process of drafting amendments with the technical assistance of the Office to ensure conformity with the Convention. ***The Committee trusts that, with the technical assistance of the Office, the Government will take into account the following comments to ensure the full conformity of these Acts with the Convention and it requests the Government to provide information on any developments in this regard.***

***Article 1 of the Convention. Adequate protection against anti-union discrimination.*** The Committee notes that the Government informs that in the period from 2013 to 2015 the Department of Industrial Relations enforced the laws protecting against anti-union discrimination in 51 cases: 48 cases pertaining to section 8 of the IRA and three cases pertaining to section 59 of the IRA. In this respect, the Committee observes that two different kinds of protection against anti-union discrimination are indeed set out in the IRA. Firstly, section 5 of the IRA broadly prohibits anti-union discrimination in relation to both union membership and participation in union activities, including at the recruitment stage. Under section 8 of the IRA, such prohibition is enforced through general remedies: in case of dismissal, the general dismissal procedures provided in the law, and otherwise the intervention of the Director-General for Industrial Relations to seek a resolution and, failing that, the Labour Court, which "may make such award as may be deemed necessary and appropriate".

Secondly, section 59 of the IRA singles out certain anti-union discrimination acts as offences (namely, the dismissal or other prejudicial treatment by reason of becoming a member or an officer of a trade union or the undertaking of certain activities by trade unionists). The commission of offences under section 59 is punished with imprisonment for a term not exceeding one year or a fine not exceeding 2,000 Malaysian ringgit (MYR) (approximately US\$479) or both, as well as payment of lost wages and "where appropriate direct the employer to reinstate the workman". From the information provided by the Government, the Committee observes that in the past years the vast majority of reported anti-union discrimination cases were addressed through the protection procedure set out in sections 5 and 8 of the IRA (neither providing for specific sanctions, nor acknowledging explicitly the possibility of reinstatement) and that in less than 6 per cent of reported cases use was made of the procedure concerning anti-union discrimination offences set out in section 59 of the IRA (explicitly providing for penal sanctions and the possibility of reinstatement). ***Recalling that, under the Convention, all acts of anti-union discrimination should be adequately prevented through the imposition of dissuasive sanctions and adequate compensation, the Committee requests the Government to provide further detailed information as to: (i) the sanctions and compensations effectively imposed to anti-union discrimination acts, especially in those cases where anti-union discrimination acts were dealt with through sections 5 and 8 of the IRA; and (ii) the factors explaining the limited use of section 59 of the IRA which sets specific sanctions for anti-union discrimination acts.***

***Articles 2 and 4. Trade union recognition for purposes of collective bargaining. Criteria and procedure for recognition.*** The Committee had noted in its previous comments that, under section 9 of the IRA, should an employer reject a union's claim for voluntary recognition for the purpose of collective bargaining, the union has to: (i) inform the Director-General of Industrial Relations (DGIR) for the latter to take appropriate action, including a competency check; (ii) the competency check is undertaken through a secret ballot to ascertain the percentage of the work people or class of work people, in respect of whom recognition is being sought, who are members of the trade union making the claim; and (iii) when the matter is not resolved by the DGIR, the Minister decides on the recognition, a decision that may be subject to judicial review by the High Court. The Committee notes that the Government informed the Conference Committee that the main criterion for recognition is the majority support (50 per cent plus one) from employees through secret ballot. The Committee also takes note of the concerns raised by Worker members at the Conference Committee, and by the MTUC in its 2015 observation, that the DGIR uses the total number of workers on the date that the union requested recognition rather than those at the ballot, which given the length of the procedure may impede the recognition of a union enjoying a majority support, and that in certain instances more than 50 per cent of the workforce, being migrant, had repatriated to their home country but were considered as counting against the union for the purposes of the secret ballot. The Committee further notes the concern raised by the ITUC that the secret ballot procedure does not provide protection to prevent interference from the employer. The Committee finally notes that the Government indicates in its latest report that a holistic review of the recognition procedure will be carried out in its next legislative review exercise. The Committee observes that the recognition procedure should seek to assess the representativeness existing at the time the ballot vote takes place (this would not be the case if, for example, the quorum is set in relation to the workforce that existed at a much earlier date, after which there may have been important fluctuations in the number of employees in the bargaining unit), and that the process should provide safeguards to prevent acts of interference. Moreover, the Committee considers that, to promote the development and utilization of collective bargaining, if no union reaches the majority required to be declared the exclusive bargaining agent, minority unions should be able to group together to attain such majority or at least be given the possibility to bargain collectively on behalf of their own members. ***The Committee requests the Government, in consultation with the social partners and in the context of the review of the recognition process, to ensure that the process provides safeguards to prevent acts of interference, and that if no union reaches the required majority to be declared the exclusive bargaining agent, minority unions may be able to group together to attain such majority or at least be given the possibility to bargain collectively on behalf of their own members.***

*Duration of proceedings for the recognition of a trade union.* In its previous report the Government had indicated that the average duration of the recognition process was: (i) just over three months in proceedings resolved by voluntary recognition; and (ii) four-and-a-half months for claims resolved by the Industrial Relations Department which do not involve judicial review. The Committee had considered that the duration of proceedings could still be excessively long. In its information provided to the Conference Committee the Government noted that the length of the process varies, depends on the cooperation of the parties and may be subject to judicial review. ***Not having received any indication from the Government as to measures carried out or planned in this regard, the Committee again requests the Government to, in consultation with the social partners and in the context of the abovementioned review exercise, take any necessary measures to further reduce the length of proceedings for the recognition of trade unions.***

*Migrant workers.* In its previous comments, considering that the requirement for foreign workers to obtain the permission from the Minister of Human Resources in order to be elected as trade union representatives hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes, the Committee requested the Government to take measures in order to modify the legislation. The Committee notes the Government's statement that current laws do not prohibit foreign workers from becoming trade union members and welcomes its indication that a legislative amendment will be introduced to enable non-citizens to run for election for union office if they have been legally residing in the country for at least three years. The Committee finally notes the concerns raised by the Worker members at the Conference Committee that migrant workers faced a number of practical obstacles to collective bargaining, including the typical two-year duration of their contracts, their vulnerability to anti-union discrimination and a recent judicial decision in the paper industry ruling that migrant workers under fixed-term contracts could not benefit from the conditions agreed in collective agreements. ***Recalling the Conference Committee's request to ensure that migrant workers are able to engage in collective bargaining in practice, the Committee requests the Government to take any measures to ensure that the promotion of the full development and utilization of collective bargaining under the Convention is fully enjoyed by migrant workers, and to provide information on any development in this respect.***

*Scope of collective bargaining.* The Committee had previously urged the Government to amend section 13(3) of the IRA, which contains restrictions on collective bargaining with regard to transfer, dismissal and reinstatement (some of the matters known as "internal management prerogatives") and to initiate tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining. The Committee welcomes the Government's indication that section 13(3) will be amended to remove its broad restrictions on the scope of collective bargaining. ***The Committee requests the Government to provide information on any development in this respect.***

*Compulsory arbitration.* In its previous comments, the Committee had noted that section 26(2) of the IRA allows compulsory arbitration, by the Minister of Labour of his own motion in case of failure of collective bargaining. The Committee had requested the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services, in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis. The Committee noted the Government's indication in previous reports that, although the provision accords discretionary powers to the Minister to refer a trade dispute to the Industrial Court for arbitration, practically, the Minister has never exercised such power in an arbitrary manner and only makes a decision upon receipt of a notification from the Industrial Relations Department that the conciliation has failed to resolve the dispute amicably. The Committee once again recalls that the imposition of compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement raises problems in relation to the application of the Convention. ***Therefore, the Committee once again reiterates its previous comments and urges the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services, in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis.***

*Restrictions on collective bargaining in the public sector.* The Committee has for many years requested the Government to take the necessary measures to ensure for public servants not engaged in the administration of the State the right to bargain collectively over wages and remuneration and other employment conditions. The Committee notes that the Government indicates once again that, through the National Joint Council and the Departmental Joint Council, representatives of public employees have other platforms to hold discussions and consultations with the Government, on matters including terms and condition of service, training, remuneration, promotions and benefits. The Committee, while recognizing the singularity of the public service which allows special modalities, must again reiterate that it considers that simple consultations with unions of public servants not engaged in the administration of the State do not meet the requirements of Article 4 of the Convention. ***The Committee urges the Government to take the necessary measures to ensure, for public servants not engaged in the administration of the State, the right to bargain collectively over wages and remuneration and other employment conditions, in conformity with Article 4 of the Convention, and recalls that the Government may avail itself of the technical assistance of the Office.***

*Application of the Convention in practice.* The Committee notes that the Worker members of the Conference Committee raised concerns over the low percentage of workers covered by collective agreements in the country (according to Worker members, 1 to 2 per cent despite the unionization rate of almost 10 per cent). ***The Committee requests the Government to provide information concerning the number of collective agreements concluded, specifying the sectors, the level of bargaining and the number of workers covered, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention.***

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

## Mali

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received in September 2017, concerning allegations of discrimination against trade union leaders in the health sector and belonging to a trade union of the national police, including their dismissal. ***The Committee requests the Government to provide its comments in response to these allegations.***

*Article 4 of the Convention. Promotion of collective bargaining. Determination of the representativeness of trade union organizations.* The Committee previously requested the Government to provide information on the organization of

occupational elections, as provided for under the Labour Code. The Committee notes the report of the high-level mission which visited Mali in June 2015 at the request of the Government, to address the issue of the representativeness of trade union organizations. The mission met with all the national social partners and reported on the unanimity expressed about the use of occupational elections to measure trade union representativeness, and regarding the urgent need to organize them. The Committee notes the Government's indication in its report that these occupational elections have not yet been held owing to a persistent disagreement between the trade union organizations as to the method of voting, but that it expects to resume the process in September 2017. The Committee welcomes the Government's efforts to reach an agreement on the issue of trade union representativeness, and recalls the urgent need for a solution in order to give full effect to the provisions of the Labour Code relating to collective bargaining. ***The Committee therefore encourages the Government to take all the necessary measures to determine as soon as possible, after consultation of the organizations concerned, the procedures for occupational elections. It expects that the Government will soon be able to report on the holding of these elections and that the results will make it possible to determine clearly the representative organizations for the purpose of collective bargaining at all levels.***

*Right to collective bargaining in practice.* ***The Committee requests the Government to provide full information on the number of agreements concluded in the country, the sectors concerned and the number of workers covered.***

## Malta

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

*Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes.* For a number of years, the Committee has been requesting the Government to amend section 74(1) and (3) of the Employment and Industrial Relations Act, 2002 (EIRA) – according to which, if an amicable settlement of a trade dispute and conciliation has not resulted in a settlement, one of the parties may notify the Minister, who shall refer the dispute to the Industrial Tribunal for settlement – so as to ensure that compulsory arbitration to end a collective labour dispute is only possible in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term.

The Committee notes that in its report, the Government indicates that the law aims at providing a speedy solution to labour disputes and that if the onus to resort to the Tribunal was imposed on both parties, they could become reluctant to use the Tribunal and labour relations would further deteriorate. The Government adds that the EIRA does not preclude any of the parties to a dispute to initiate or continue an industrial action even after the trade dispute has been referred to the Tribunal. While taking due note of this information, the Committee observes that the awards of the Industrial Tribunal are binding (section 82(1)) and thus would entail a prohibition of all recourse to an industrial action or a restriction to an ongoing industrial action. The Committee once again recalls in this regard that arbitration to end a collective labour dispute or a strike should only be allowed based on agreement of the parties to the dispute or where the strike may be restricted or prohibited, that is in disputes in the public service involving public servants exercising authority in the name of the State, in essential services in the strict sense of the term or in the event of an acute national crisis. ***The Committee, therefore, once again requests the Government to take the necessary measures, in consultation with the social partners, to amend section 74(1) and (3) of the EIRA to ensure respect for the abovementioned principles with regard to compulsory arbitration. It requests the Government to provide information on any developments in this regard.***

*Article 9. Armed forces and the police.* The Committee notes with *interest* the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amends the EIRA by adding a new section 67A, which gives members of the disciplined forces (defined in the EIRA as armed forces, police, prison service and assistance and rescue force) the right to become members of a registered trade union of their choice. Such a trade union shall not be entitled to limit its membership to any particular rank and shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of its members. ***The Committee invites the Government to provide information on the application in practice of section 67A of the EIRA, in particular whether any trade unions have been formed and registered under this provision and the number of their members, and also whether any requests for such trade union registration are under consideration or have been rejected.***

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

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)**

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* The Committee recalls that it had previously requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals submitted by public officers, portworkers and public transport workers given that those categories are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act, 2002 (EIRA). Having further noted that public officers could appeal to the Public Service Commission, an independent body established under section 109 of the Constitution of Malta, the Committee requested

the Government to indicate, with regard to cases of anti-union dismissal, whether the Public Service Commission was empowered to grant such compensatory relief – including reinstatement and back pay – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee also requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals of portworkers and public transport workers.

The Committee notes the Government's indication that information about compensatory relief in case of anti-union dismissal of public officers is still being sought from the Public Service Commission and will be provided in the near future. The Government further states that a new Legal Notice on Trade Union Recognition, also applicable to Government employees, will enter into force and will contain the following clause: "No person may interfere, intimidate, exert any force or otherwise cause, or threaten to cause, detriment to an employee ... for joining or attempting to join, or for leaving or attempting to leave a union." Recalling that, according to its *Article 6*, public servants not engaged in the administration of the State are covered by the Convention and that the issue of compensatory relief in case of anti-union dismissal of public officers has been pending for over a decade, the Committee *regrets* that the Government has not provided a more substantial reply in this respect. ***The Committee thus requests the Government once again to indicate whether the Public Service Commission is empowered to grant such compensatory relief – including reinstatement and back pay awards – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination that may affect public officers not engaged in the administration of the State. In addition, the Committee regrets that the Government has again failed to provide any information in relation to portworkers and public transport workers and, therefore, requests it once again to indicate the procedures applicable for the examination of allegations of anti-union dismissals of these two categories of workers.***

The Committee further observes that the EIRA does not provide for specific sanctions for acts of anti-union discrimination and that the general sanctions set by section 45(1) – a fine not exceeding €2,329 – would thus apply to such cases. ***Considering that this fine might not be sufficiently dissuasive, particularly for large enterprises, the Committee requests the Government to take the necessary measures, after consultation with the social partners, to provide for sufficiently dissuasive sanctions for acts of anti-union discrimination, so as to ensure the application of the Convention.***

*Articles 2 and 3. Adequate protection against acts of interference.* In its previous observations, the Committee requested the Government to indicate the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts. The Committee notes the Government's indication that although the EIRA is silent on this subject, parties who feel wronged by another party's acts of interference can institute a civil action for damages before the courts of civil jurisdiction. While taking due note of this information, the Committee emphasizes the importance of an explicit prohibition of acts of interference of workers' and employers' organizations, their agents or members in each other's establishment, functioning or administration. ***The Committee therefore requests the Government to take the necessary measures to introduce such prohibition into the legislation, accompanied by rapid appeal procedures and sufficiently dissuasive sanctions.***

*Article 4. Promotion of collective bargaining.* The Committee had previously requested the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act, so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday on the basis of a collective agreement. The Committee notes the Government's indication that on the initiative of employee representatives, amendment of section 6 is being tabled for discussion among the social partners in the tripartite Employment Relations Board in the context of a re-examination of the EIRA. ***Welcoming this initiative, the Committee trusts that it will assist the Government in taking the necessary measures to amend section 6 of the National Holidays and Other Public Holidays Act in line with the Committee's comments. The Committee requests the Government to provide information on any progress in this regard.***

*Article 5. Armed forces and the police.* The Committee notes with *interest* the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amends the EIRA by adding a new section 67A, which gives members of the disciplined forces the right to become members of a registered trade union of their choice. Such a trade union shall not be entitled to limit its membership to any particular rank and shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of its members. ***The Committee invites the Government to provide information on the application in practice of section 67A of the EIRA, in particular whether any trade unions were formed under this provision and whether they were able to participate in collective bargaining.***

## Mauritania

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)**

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, and the observations of the General Confederation of Workers of Mauritania (CGTM), received on 4 September 2017, denouncing violent repression resulting in deaths during trade union demonstrations and the systematic arrest of trade unionists during these demonstrations. **The Committee notes these allegations with concern and requests the Government to provide its comments in this respect.** The Committee notes the observations of the Free Confederation of Mauritanian Workers (CLTM), received on 31 August 2017, and the Government's reply thereon.

*Article 3 of the Convention. Trade union elections.* The Committee previously noted the process initiated in 2014 for the adoption of a legal framework for the determination of criteria for the representativity of trade unions in the private and public sectors with a view to the organization of the corresponding elections and it requested the Government to provide information on the progress achieved. The Committee notes that the Government undertakes to include all the organizations concerned in consultations on the legislative reform process that it has commenced in relation to elections. The Committee also notes the observations of the CGTM to the effect that, despite a Memorandum of Understanding agreed between the social partners in 2017, the process is slow to achieve fruition and enterprises have still not received any notification of the process. However, the Committee notes the Government's indication that three orders respecting staff delegates and the procedures for their election, the consolidation of election results and practical procedures for the organization and operation of the National Social Dialogue Council have been adopted since 2014. **The Committee requests the Government to provide copies of these orders and to continue providing information on the progress achieved and on the legislative reform process that has been initiated with a view to the holding of elections.**

*Articles 2 and 3. Legislative amendments.* The Committee recalls that for several years it has been requesting the Government to amend certain provisions of the Labour Code to bring them into full conformity with the Convention. **The Committee once again expresses the firm hope that in the near future the Government will report tangible progress in the revision of the Labour Code with a view to bringing it fully into conformity with the Convention. The Committee expects that the Government will take due account in this regard of all the points recalled below:**

- *Right of workers to establish and join organizations of their own choosing without prior authorization.* **The Committee requests the Government to take measures to amend section 269 of the Labour Code so as to remove any obstacles that prevent the exercise of the right to organize by minors who have access to the labour market (14 years of age, in accordance with section 153 of the Labour Code), whether as workers or apprentices, without the permission of their parents or guardian being necessary.**
- *Right to organize of magistrates.* The Committee recalls that for many years it has been requesting the Government to take measures to ensure that magistrates enjoy the right to establish and to join organizations of their own choosing, in accordance with *Article 2* of the Convention. **Noting the Government's indication that magistrates now have their own organization in which they exercise their trade union rights to the full, the Committee requests the Government to indicate the legal basis that has enabled this progress.**
- *Right of workers' organizations to freely elect their representatives and to organize their administration and activities in full freedom, without interference from the public authorities.* The Committee recalls that the combined implementation of sections 268 and 273 of the Labour Code is liable to be an obstacle to the right of organizations to elect their representatives in full freedom, by preventing them from electing qualified persons or depriving them of the experience of certain leaders when they do not have among their own ranks sufficient numbers of competent persons. **The Committee therefore requests the Government to make the conditions less rigid for eligibility as trade union leaders or officers, for example by removing the requirement to belong to the occupation for a reasonable proportion of leaders. The Committee also requests the Government to amend section 278 of the Labour Code with a view to ensuring that any change in the administration or leadership of a trade union can take effect as soon as it has been notified to the competent authorities, and without the latter's approval being necessary.**
- *Compulsory arbitration.* **The Committee requests the Government to take measures to amend section 350 of the Labour Code to ensure that the possibility for the Minister of Labour to have recourse to compulsory arbitration in the event of a collective dispute is limited to cases involving an essential service in the strict sense of the term, that is a service the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and situations of acute national crisis.**
- *Duration of mediation.* **Recalling that the maximum duration (120 days) of a mediation procedure before a strike may be called, as set out in section 346 of the Labour Code, is excessive, the Committee requests the Government to take measures to amend this provision in order to reduce the maximum duration.**

- *Strike pickets.* The Committee recalls that the restrictions imposed on strike pickets and the occupation of premises should be limited to cases in which the action ceases to be peaceful or in which the observance of the right to work of non-strikers or the right of the management to enter the premises of the enterprise is impaired. **The Committee therefore requests the Government to take measures to amend section 359 of the Labour Code in order to abolish the prohibition of the peaceful occupation of workplaces or their immediate surroundings, and to provide for penal sanctions only in cases where action during a strike is not peaceful.**

## Mauritius

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2005)**

The Committee notes with *interest* the adoption of the Police (Membership of Trade Unions) Act 2016 granting police officers the right to organize.

*Article 2 of the Convention. Right of workers to establish and join organizations without distinction whatsoever. Migrant workers.* In its previous comment, the Committee had requested the Government to provide information on measures taken or envisaged to ensure that migrant workers may effectively exercise in practice the right to establish and join organizations of their own choosing. The Committee notes the information provided by the Government on the activities undertaken by the Special Migrant Workers' Unit. It further notes the statistics provided by the Government on the membership of ten trade unions also operating in export processing zones (EPZs) and open for migrant workers to join, and notes the Government's indication that no records are available with regard to the number of migrant workers who are union members, as trade unions are not bound by law to disclose the nationality of their members. The Committee observes in this regard that, under section 13 of the Employment Relations Act 2008 (ERA), both a citizen of Mauritius and a non-citizen holding a work permit are entitled to be a member of a trade union. **Noting the Government's indication that a revision of the Employment Rights Act and the ERA is under way, the Committee requests the Government to take necessary measures, within the framework of the current labour law review, to ensure that all migrant workers, whether in a regular or irregular situation, enjoy, in law and in practice, the right to establish as well as join organizations without distinction whatsoever. Noting from the information supplied by the Government that two out of ten trade unions operating in EPZs are in the process of dissolution, the Committee also requests the Government to provide information on the precise grounds therefor and the outcome of any related proceedings, and the impact on the rights of migrant workers to exercise their rights under Article 2 of the Convention.**

*Self-employed workers.* The Committee notes the Government's indication in its 2016 report under the Right of Association (Agriculture) Convention, 1921 (No. 11), that there is no legal provision in the current labour legislation granting trade union rights to self-employed workers in the agricultural or any other sector in Mauritius. **The Committee requests the Government to hold consultations with social partners and other interested parties with the aim of ensuring, within the framework of the current revision of the Employment Rights Act and the ERA, that all workers, including self-employed workers, enjoy the right to establish and join organizations without distinction whatsoever.**

**The Committee reminds the Government that it may avail itself of technical assistance from the Office with respect to all issues raised in its present comments.**

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

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

The Committee notes the observations received on 1 September 2017 from Business Mauritius and the International Organisation of Employers (IOE), which relate to issues examined by the Committee below. It also notes the Government's comments thereon, as well as on the 2016 observations from the Confederation of Private Sector Workers (CTSP) and the General Trade Unions Federation (GTUF).

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* The Committee had requested the Government to provide information on the application of *Article 1* in practice, including statistical data on the number of complaints of anti-union discrimination brought before the competent authorities (labour inspectorate and judicial bodies), the outcome of relevant judicial or other proceedings and their average duration, as well as the number and nature of sanctions imposed or remedies provided. The Committee notes that the Government refers to the legislative provisions providing protection against acts of anti-union discrimination: section 31 of the Employment Relations Act 2008 (ERA) (prohibiting anti-union discrimination and providing for a maximum fine of Mauritian rupees (MUR) 100,000 (US\$2,936)); and sections 38(1)(d) and (f) (prohibiting anti-union dismissal), 46(5B) (providing for reinstatement or severance pay of three months' wages per year of service) and 67(1)(e) and (2) (providing for a maximum fine of MUR25,000 (\$733) or imprisonment of two years), of the Employment Rights Act 2008. Business Mauritius enumerates, in addition, the reversal of the burden of proof under section 31 of the ERA. The Committee further observes the Government's statement that, as per its records, no complaint of anti-union discrimination has been reported to the competent authorities from 1 June 2016 until 31 May 2017; and that, since 2013, four cases of termination of employment

of union delegates have been registered at the labour office (one case was settled following an amicable settlement on the agreed sum of MUR30,000; in one case, the worker was reinstated on the same terms and conditions of employment; in another case, the Industrial Court gave judgment in favour of the worker for unjustified termination of employment and the employer was ordered to pay a sum of MUR800,000 (\$23,631) as severance allowance; and the fourth case is being processed for court action). In this regard, the Committee wishes to recall the CTSP 2016 allegations of frequent harassment, intimidation, threats, discrimination and unfair dismissals of trade union representatives when trade unions are established in export processing zones (EPZs), and of frequent acts of anti-union discrimination in the private sector including a recent drastic increase in anti-union dismissals of trade union leaders and delegates without compensation. ***The Committee requests the Government to pursue its efforts, in particular in the EPZs, so as to ensure that all allegations of anti-union discrimination give rise to expeditious investigations and, if need be, to the imposition of dissuasive sanctions. It also requests the Government to continue to provide statistical data on the number of complaints of anti-union discrimination, including anti-union dismissals, brought before the competent authorities (labour inspectorate and judicial bodies), their outcome and the number and nature of sanctions imposed or remedies awarded.*** With regard to the CTSP 2016 allegation of judicial proceedings in rights disputes taking six to seven years, the Committee notes the Government's indication that, in the absence of an amicable settlement, cases are referred to the Industrial Court, which at a preliminary stage tries to conciliate the parties, failing which the matter is fixed for trial and a judgment is delivered without a time limit set for the determination of the case. ***Highlighting that an excessive delay in processing cases of anti-union discrimination could give rise to a denial of justice, the Committee requests the Government to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration.***

***Article 4. Promotion of collective bargaining.*** The Committee requested the Government to redouble its efforts, in particular in EPZs, in the garment sector and in the sugar industry, to promote and encourage the greater development and utilization of procedures of voluntary negotiations between employers or employers' organizations and workers' organizations to regulate the terms and conditions of employment through collective bargaining agreements. It also requested the Government to continue to supply, or if necessary to compile, statistical information on the functioning of collective bargaining in practice as well as on the use of conciliation services. The Committee welcomes the Government's indication that: (i) workers' education sessions through seminars and talks are still being conducted on an ongoing basis by the Ministry of Labour targeting workers of different sectors including the EPZ/textile sector: from 1 June 2016 until 31 May 2017, 33 training/sensitization activities were carried out for the benefit of 323 male and 500 female employees of the EPZ/textile sector, wherein emphasis was laid on legal provisions and rights at work including those pertaining to the right to collective bargaining and unionization as guaranteed in the labour law; (ii) sensitization of workers in this regard is also effected on an ongoing basis during inspection visits at workplaces: during the abovementioned period, 79 inspection visits were carried out in the EPZ sector, covering 26,045 local workers (11,652 male/14,393 female), and 672 inspection visits in undertakings in the manufacturing sector, which employs 32,286 migrant workers (28,084 male/4,202 female); and (iii) from the 14 collective agreements registered with the Ministry of Labour as of June 2016 to date, one agreement pertains to the EPZ sector. The Committee observes that the information provided by the Government concerning the type of measures it has been taking to promote collective bargaining, is identical to that supplied in its last report. The Committee also notes that, according to Business Mauritius, the ERA sets out in a structured manner the conditions for the harmonious development of collective bargaining, and there is no impediment in the ERA preventing EPZ or migrant workers from embarking in collective bargaining. ***Taking due note of the legislative provisions which the Government enumerates as aiming at the promotion of collective bargaining (sections 4–6, 36, 37, 40, 41, 43, 51, 53 and 54 and Part VI of the ERA), the Committee expects that the Government will continue to carry out inspections and sensitization activities as described above. The Committee requests the Government, in consultation with the social partners, to strengthen these activities, in particular in the textile sector, sugar industry, manufacturing sector and other sectors employing EPZ workers and migrant workers, in order to promote and encourage in practice the greater development and utilization of procedures of voluntary negotiations between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective bargaining agreements.***

The Committee notes the information provided by the Government on the use of conciliation services in practice. In particular, as regards the CTSP 2016 allegation of an excessive length of the conciliation proceedings (not less than seven months) due to lack of human resources and logistic support, the Committee notes the Government's explanations that, in practice: (i) trade unions report a dispute to the Commission for Conciliation and Mediation (CCM), as soon as the recommended duration for collective bargaining negotiations (90 days) has lapsed, without meeting the condition of a deadlock in the negotiations (section 64(2) of the ERA); and (ii) as a result, true collective bargaining negotiations start only after the dispute has been reported to the CCM, so that the 30-day period in which conciliation should be completed pursuant to section 69(3) of the ERA, is usually extended by the parties, as allowed for by section 69(4) of the ERA. ***Observing the divergence of views between the Government and the social partners, and considering that voluntary conciliation procedures should be expeditious, the Committee invites the Government to engage in a dialogue with the national social partners with a view to identifying the possible adjustments to be made to improve the rapidity and efficiency of the conciliation proceedings, and to provide information in this regard. The Committee also requests the***

**Government to continue to supply statistics on the functioning of collective bargaining in practice (number of collective agreements concluded in the private sector, especially in EPZs; branches and number of workers covered).**

*Interference in collective bargaining.* With regard to the alleged Government interference in collective bargaining in the sugar sector, the Committee trusted that, in the future, the Government would continue to refrain from having recourse to compulsory arbitration with the effect of bringing to an end collective labour disputes in that sector. The Committee notes the Government's indication that it has already submitted its comments on the matter in 2015 and that it has taken due note of the comments and recommendations of the Committee. ***The Committee expresses the hope that the Government will continue to refrain from unduly interfering in and will give priority to, collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the sugar sector in particular and in the private sector in general.***

The Committee also takes note of the view of Business Mauritius that the Remuneration Orders of the National Remuneration Board (NRB) are so elaborated and prescriptive that they act as a disincentive to collective bargaining, and suggests that the authorities: (i) implement the decision of the International Labour Conference Committee on the Application of Standards and render collective bargaining voluntary; (ii) provide for a more conducive statutory framework for the conduct of collective bargaining; and (iii) review the functioning of the industrial relations institutions such as the CCM and the Employment Relations Tribunal in order to support the collective bargaining process by providing more speedy and free conciliation, mediation and arbitration services. Business Mauritius believes that the harmonious development of industrial relations would be promoted, if the authorities, when tackling the issue of the loss of workers' purchasing power, were to adopt solutions, which did not entail modifications of what had been agreed upon by workers' and employers' organizations, without the consent of both parties. Business Mauritius stresses that, currently, the Additional Remuneration Act modifies unilaterally duly negotiated collective agreements without the consent of the parties. This interference into the process of free and voluntary collective bargaining is a disincentive for parties to engage in collective bargaining. ***The Committee requests the Government to provide its comments in respect of the observations of Business Mauritius.***

*Article 6. Collective bargaining in the public sector.* As regards the public sector, the Committee had previously noted the Government's indication that consultations were held by the Pay Research Bureau (PRB) in the context of the review of pay, grading structures and other conditions of service with federations and trade unions; and discussions and negotiations on general terms and conditions of employment as reviewed by PRB were carried out centrally at the Ministry of Civil Service and Administrative Reform with the federations of civil service unions, but no agreements were signed. The Committee had also noted the statement of the Worker member of Mauritius at the Conference Committee in 2016, according to which: (i) collective bargaining did not exist at all in the public sector; and (ii) while the salaries of public servants were decided unilaterally by the PRB, conditions of service were determined at bipartite meetings between the Ministry of Civil Service and Administrative Reform and the PRB, without faithful and meaningful tripartite negotiations. The Committee had requested the Government to provide further information on the manner in which collective bargaining took place in the case of public servants other than those engaged in the administration of the State. The Committee notes that the Government states that the PRB acts as a permanent and independent body, which adopts a consultative approach with workers' organizations and the Ministry of Civil Service and Administrative Reform, before making its recommendation to the Government. The Committee notes that, according to Business Mauritius, as Mauritius has ratified the Convention, the right to collective bargaining should be recognized in the public sector as well, subject to special modalities fixed in accordance with the Labour Relations (Public Service) Convention, 1978 (No. 151). The Committee recalls that, pursuant to *Article 6* of the Convention, all public servants, other than those engaged in the administration of the State, should enjoy collective bargaining rights, and that, under this Convention, the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State (such as employees in public enterprises, employees in municipal services, public sector teachers, etc.), instead of real collective bargaining procedures, is not sufficient. ***The Committee invites the Government, together with the professional organizations concerned, to study ways in which the current system could be developed so as to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State.***

*Technical assistance of the Office.* The Committee recalls that, in its conclusions ensuing from the debate in June 2016, the Conference Committee requested the Government to accept technical assistance from the Office to comply with the conclusions. The Committee notes the Government's indication that the formulation of the second-generation Decent Work Country Programme (DWCP) for Mauritius is being prepared with ILO assistance since April 2017, and that the issues raised by the Committee will be taken up within this framework. It also notes that Business Mauritius would welcome ILO technical assistance in relation to the promotion of collective bargaining, including through legislative amendments, since collective bargaining at enterprise or sectoral level is the best mechanism for regulating terms and conditions of employment and should gain momentum. ***Noting the Government's indication that the revision of the Employment Rights Act and the ERA is under way, the Committee reminds the Government that it may, if it so wishes, avail itself of the technical assistance of the Office, with a specific focus on the issues raised in the present observation.***

## Mexico

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

The Committee notes the observations of the Confederation of the Industrial Chambers of the United States of Mexico (CONCAMIN) and the Confederation of Employers of the Mexican Republic (COPARMEX) transmitted with the Government's report.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017. **The Committee requests the Government to provide its comments in this respect.**

The Committee notes the Government's information relating to the observations from previous years of the ITUC and IndustriALL Global Union (IndustriALL), indicating that it will send further information on some pending issues and specifying that, for certain other issues, in particular the alleged restrictions to the right to strike by the Federal Conciliation and Arbitration Board, the observations do not provide sufficient details to enable the Government to investigate them. Lastly, the Committee notes that, as indicated by the Government, some of the allegations raised in these observations are the subject of cases before the Committee on Freedom of Association, particularly Case No. 2694, the recommendations of which the Committee refers to.

*Civil liberties and trade union rights.* With respect to the allegations of the ITUC and IndustriALL of 2015 and 2016 relating to acts of violence against trade unionists, the Committee requested these organizations to provide the most detailed information possible on the allegations of the deaths of four members of the National Union of Mining, Metallurgy, Steel and Allied Workers; the detention of 14 agricultural workers in March 2015; and several deaths and many persons injured, and the arrest of trade unionists, in the context of a collective dispute in the education sector in Oaxaca; as well as other allegations of acts of violence against trade unionists. The Committee notes the Government's indication that it is still waiting for these organizations to provide further details. The Committee notes that, in its 2017 observations, the ITUC has sent greater details on the allegations in the context of the trade union dispute in the education sector in Oaxaca in June 2016, including information on the development of the events and the identities of the persons who died. **The Committee requests the Government to send its comments in this respect. In addition, as regards the other allegations of attacks on civil liberties and trade union rights, observing that the Government indicates that it has insufficient information from the ITUC and IndustriALL, the Committee requests the Government, on the basis of the information available and any additional details provided by these organizations, to also send its comments in this respect.**

*Article 2 of the Convention. Conciliation and arbitration boards. Constitutional reform of the labour justice system.* With respect to its previous comments regarding observations of workers' organizations alleging that the operation of conciliation and arbitration boards impedes the exercise of freedom of association, the Committee notes with **satisfaction** the adoption and entry into force in February 2017 of the reform of the Political Constitution of Mexico, as a part of the process to reform the labour justice system that the Committee examined in its previous comments, introducing, as the main changes: that labour justice is vested with federal or local bodies of the judicial authority (to which the functions of the boards in this respect would be transferred); that conciliation procedures (a stage that in general precedes referral to the labour courts) are more flexible and effective (with the establishment of specialized and impartial conciliation centres in each federative entity); and that the federal conciliation body is a decentralized agency with responsibility for the registration of all collective labour agreements and trade unions. The Government indicates that it is coordinating a transition process which will entail harmonization of the legislation, and that the necessary development of the regulatory framework is under way – including a new unified procedural law in the area (a national code of labour procedures is under preparation) and a new Act on the decentralized body responsible for conciliation in relation to the national register of trade unions and collective labour contracts. The Government also states that, while the operations of the labour courts, the conciliation centres and the decentralized body are being initiated and institutionalized, the conciliation and arbitration boards, and other labour authorities, will continue to address disagreements and disputes that arise, including on the registration of trade unions and collective labour contracts. **The Committee encourages the Government to refer the envisaged legislative developments for the implementation of the constitutional reform for tripartite consultation, and requests it to provide information on any developments in that respect, while reiterating that technical assistance of the Office remains available.**

*Representativity of trade unions and protection contracts.* In its previous observation, the Committee requested the Government, in consultation with the social partners, to continue adopting the necessary legislative and practical measures to find solutions to the problems arising out of the issue of protection trade unions and protection contracts, including in relation to the registration of unions. The Committee notes that the Government reiterates that: (i) the reform of the political Constitution as it applies to labour justice will combat all acts of deception or extortion, through the establishment of a decentralized body responsible for the registration of all trade unions in the country and collective contracts; (ii) the federal and local conciliation and arbitration boards, within the framework of the National Conference of Conciliation and Arbitration Boards, have undertaken to launch an internal dialogue process to decide whether to adopt the criteria of the plenary of the federal board for the harmonization of legal criteria; and (iii) the 2012 reforms to the Federal Labour Act (LFT) introduced mechanisms to promote free, direct and secret voting for the elections of trade union

officers, as well as accountability of those leaders and provisions making public the information on the registration of trade unions, collective agreements and internal labour regulations. The Committee also notes that the Government has not provided further information on the proposed amendments to the LFT, which the Committee noted with interest, as the Government indicated in its previous report, that these had been presented, along with the proposals for constitutional reform, for the revision of the procedures for the signing, deposit and registration of collective contracts in the interests of securing full respect for trade union independence and the right to organize. The Committee therefore notes with *concern* the observations of the ITUC alleging that protection contracts will continue to be a regular practice and that the action taken by democratic trade unions to combat them through recount procedures has met with opposition and procedural irregularities. **Recalling that the Committee has expressed concern on this matter for a number of years, and that it was highlighted in the conclusions of the Committee on the Application of Standards in June 2015, the Committee once again requests the Government, in consultation with the social partners, to take the necessary practical and legislative measures to find solutions to the problems arising out of the issue of protection unions and protection contracts, including in relation to the registration of trade unions. Reiterating that ILO technical assistance remains available and expecting that the implementation of the constitutional reform will provide an opportunity to address these problems, the Committee requests the Government to provide information on any developments in this respect, as well as in relation to the proposed reform of the LFT.**

*Publication of the registration of trade unions.* The Committee notes the Government's indication of a compliance rate of 85 per cent with regard to the legal requirement for conciliation and arbitration boards to publish the registration and statutes of trade unions. The Government specifies that this amounts to 24 federative entities, comprising 49 of the 57 local boards of the states having published 23,628 trade union registrations, involving 1,431,100 union members. The Government adds that the constitutional reform will place the responsibility for the registration of all collective labour contracts and trade unions, as well as all relevant administrative processes, with the decentralized conciliation body. **While duly noting the progress referred to, the Committee requests the Government to continue providing information on compliance with the legal requirement to publish the registration and statutes of trade unions, and on any impact that the new constitutional reform and, in particular, the establishment of the decentralized body may have on the procedure for the registration of trade unions, including the publication of the registration of trade unions and their statutes.**

*Articles 2 and 3. Possibility of trade union pluralism in state bodies and the possibility to re-elect trade union leaders.* The Committee recalls that for years it has been commenting on the following provisions: (i) the prohibition of the coexistence of two or more unions in the same state body (sections 68, 71, 72 and 73 of the Federal Act on State Employees (LFTSE)); (ii) the prohibition on trade unionists from leaving the union of which they have become members (section 69 of the LFTSE); (iii) the prohibition on unions of public servants from joining trade union organizations of workers or rural workers (section 79 of the LFTSE); (iv) the reference to the Federation of Unions of Workers in the Service of the State (FSTSE) as the single central trade union federation recognized by the State (section 84 of the LFTSE); (v) the legislative declaration establishing the trade union monopoly of the National Federation of Banking Unions (FENASIB) (section 23 of the Act issued under Article 123B(XIIIbis) of the Constitution); and (vi) the prohibition of officer re-election in trade unions (section 75 of the LFTSE). In its previous comment, the Committee noted the Government's indication that, in accordance with the case law of the Supreme Court of Justice, and with practice and custom, these legislative restrictions on the freedom of association of public servants are not applied, that the provisions in question are not operative and that the legislative authorities were making efforts to update the LFTSE through legislative initiatives to amend several of the provisions concerned. The Committee notes the Government's indication in its latest report that a legislative initiative to reform the LFTSE was presented in 2013 to amend certain of these provisions (including sections 69 and 72 of the LFTSE) and that this initiative is pending decision in the relevant legislative committees. The Government reiterates that the terms of the Convention are fully respected and indicates that five federations grouping state employees have been registered and that 148 acknowledgements of trade unions have been made. **Recalling the need to ensure conformity of the legislative provisions with the Convention, even if they are in abeyance or are not applied in practice, the Committee once again requests the Government to take the necessary measures to amend the restrictive provisions referred to above in order to bring them into conformity with national case law and the Convention, and to provide information on any developments in this regard.**

*Article 3. Right to elect trade union representatives in full freedom. Prohibition on foreign nationals becoming members of trade union executive bodies (section 372(II) of the LFT).* In its previous comment, the Committee noted the Government's indications that: (i) section 372(II) of the LFT, which prohibits foreign nationals from becoming members of trade union executive bodies, was tacitly repealed by the amendment to section 2 of the Act, which prohibits all discrimination based on ethnic or national origin; (ii) the registration authorities do not require trade union leaders to have Mexican nationality, and this prohibition is not applied in practice; and (iii) as indicated in relation with the process of considering further legislative amendments to the 2012 labour reform, since October 2015 the Government has been awaiting the opinions of the social partners, in the context of which this matter can be assessed. The Committee notes that in its last report the Government reiterates that the legislative restriction does not apply. The Government adds that no specific case nor any complaint in this respect has been assessed and that some trade union statutes expressly recognize that foreign nationals may participate in trade union executive bodies. **Recalling once again the need to ensure the conformity of the legislative provisions with the Convention, even if they are in abeyance or are not applied in practice,**

*the Committee requests the Government to take the necessary measures to amend section 372(II) of the LFT with a view to making explicit the tacit repeal of this restriction. It further requests the Government to provide any available information on the number and position of foreign nationals who are participating in the various trade union executive bodies.*

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

## Montenegro

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 2006)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 and the Government's reply thereto. It recalls that the issues raised by the ITUC were examined by the Committee on Freedom of Association (CFA) in Case No. 3140 in March 2016 (Report No. 377) and that the case is currently in follow-up by the CFA. The Committee also notes the observations of the Montenegrin Employer Federation (MEF) and the International Organisation of Employers (IOE) received on 30 November 2017.

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* The Committee previously noted that while the Labour Law provides protection against acts of direct and indirect discrimination of persons seeking employment and employed persons on the ground of membership in trade union organizations (sections 5–10) and protection against acts of anti-union discrimination of trade union representatives up to six months after termination of trade union activities (section 160), it did not provide for fines in case of infringement of these provisions. The Committee notes the Government's statement that its work programme foresees the adoption of a new Law on the Representativeness of Trade Unions by the end of 2017. The Government indicates that the draft of this Law was drawn up within a working group composed of representatives of the Ministry of Labour and Social Welfare and the social partners, particularly the Union of Employers of Montenegro, the Union of Free Trade Unions of Montenegro and the Confederation of Trade Unions of Montenegro. The Government indicates that this new Law will provide sanctions, including appropriate fines, regarding acts of anti-union discrimination against trade union members and officials based on trade union membership or legitimate union activities. **Further noting the Government's indication that the drafting of a new Labour Law is ongoing, the Committee requests the Government to pursue its efforts to amend the legislation so as to ensure the provision of sufficiently dissuasive sanctions – including dissuasive fines – for acts of anti-union discrimination against union members and officials on the grounds of trade union membership or legitimate trade union activities. It requests the Government to provide a copy of the new Law on the Representativeness of Trade Unions, once adopted.**

*Article 2. Adequate protection against interference.* In its previous comments, the Committee noted that there was no explicit provision against acts of interference by employers or employers' organizations in the establishment, functioning and administration of trade unions and vice versa. The Committee notes once again that the Government refers to sections 154 and 159 of the Labour Law, which provide that employees and employers shall be entitled, at their free choice, without prior approval, to establish their organizations and become members (section 154) and that the employer shall enable employees to freely exercise their trade union rights and provide the trade union organization with conditions for efficient performance of trade union activities (section 159). The Government further refers to section 172(33) of the Labour Law, which provides for a financial penalty if the employer fails to provide employees with the free exercise of trade union rights, or fails to provide the trade union with the conditions for exercising trade union rights. The Committee once again observes that the provisions do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. **Noting the Government's indication that there is an ongoing labour law reform, the Committee once again requests the Government to take measures to adopt specific legislative provisions prohibiting acts of interference on the part of the employer or employers' organizations as defined in Article 2(2) of the Convention and making express provision for rapid appeal procedures, accompanied with effective and sufficiently dissuasive sanctions.**

*Article 4. Promotion of collective bargaining. General Collective Agreement.* The Committee previously requested the Government to take measures to amend sections 149 and 150 of the Labour Law, specifying the general collective agreement shall be signed between the representative trade union organization, a relevant body of the representative employers' federation and the Government, so as to ensure that the Government may only participate in the negotiation of a general collective agreement on issues linked to the minimum wage, (and that matters relating to other terms of employment are subject only to bipartite collective bargaining between employers and their organizations and workers' organizations.) The Committee notes the Government's statement that the drafting of a new Labour Law is ongoing, and that in that context, the representatives of the social partners agreed that the Government should participate in the negotiations on the conclusion of the General Collective Agreement. The Committee also notes that the General Collective Agreement covers both the public and private sectors. The Committee once again recalls that *Article 4* of the Convention envisages collective bargaining between employers and their organizations and workers' organizations in a bipartite structure. As a consequence, the participation of the Government would be justifiable if it is limited: (i) to the establishment of the minimum wage rate; and (ii) to its capacity as an employer with respect to public sector workers,

whereas the negotiation of the other terms of employment should take place in a bipartite context with the parties enjoying full autonomy in this regard. ***The Committee requests the Government to provide further information on the consultations undertaken with respect to the involvement of the Government in the negotiation of the General Collective Agreement, as well as to provide a copy of the new Labour Law, once adopted.***

***Representativeness of employers' federations.*** In its previous comments, the Committee noted that section 161 of the Labour Law provides that an employers' federation shall be considered as representative if its members employ a minimum of 25 per cent of employees in the economy of Montenegro and participate in the gross domestic product of Montenegro with a minimum of 25 per cent and that, should no association meet these requirements, employers may make an agreement to participate directly in the conclusion of a collective agreement. The Committee requested the Government to take measures to either substantially reduce or repeal these minimums. The Committee notes the Government's statement that the drafting of the new Labour Law is ongoing, and that the recommendations of the Committee will be presented to the social partners within the working group.

The Committee also notes that the MEF and the IOE consider that the established thresholds are adequate to define the representativeness of an employers' organization. The organizations further indicate that: (i) a company can decide to affiliate to one or more employers' organizations, meaning that the 25 per cent threshold should not be read in a horizontal manner and that more than four employers' organizations can be established in the country; and (ii) there is one representative employers' organization in the country – (the MEF) as well as a number of other business organizations. ***Taking due note of the Government's reply and the indications of the MEF and the IOE, the Committee requests the Government to provide information on the consultations undertaken with the social partners in the context of the elaboration of the Labour Law on the minimum requirements established for an employers' association to be considered as representative.***

The Committee previously noted that pursuant to section 12 of the Rulebook on the manner and procedure for registering employers and determining their representation (No. 34/05), the affiliation of employers' associations to international or regional employers' confederations is a prerequisite for them to be considered as being representative at the national level, and it requested that measures be taken to amend the Rulebook. In this respect, the Committee notes the Government's statement that, following the adoption of the new Labour Law, new regulations will be drafted, and the Committee's recommendation will be taken into account in that context. In this respect, the Committee notes the statement of the MEF and the IOE that this requirement is necessary to avoid the establishment of a multiplicity of non-independent employers' organizations, and that it is only a prerequisite concerning participation in national tripartite social dialogue institutions, national tripartite bodies, or to participate in international meetings. The IOE and the MEF highlight that organizations like the IOE do not award exclusive membership rights and, in various countries, it has different employers' organizations as a member. ***Recalling that for an employers' association to be able to negotiate a collective agreement, it should suffice to establish that it is sufficiently representative at the appropriate level, regardless of its international or regional affiliation or non-affiliation, the Committee invites the Government to pursue, in the context of the current labour law reform, the consultations with the social partners covered so as to ensure that the prerequisites for employers' organizations to bargain at the national level are in line with the Convention.***

***The Committee reminds the Government that the technical assistance of the Office remains at its disposal, if it so wishes, as regards the legal issues raised in this observation.***

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

## Mozambique

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

In its previous comments, the Committee noted the 2010 observations made by the International Trade Union Confederation (ITUC) concerning the application of the Convention. ***The Committee once again requests the Government to provide its comments in this respect. With regard to the ITUC's observations of 2008 relating to serious acts of violence against striking workers in the sugarcane plantation sector, the Committee requests the Government to provide information on investigations carried out in relation to these matters and, in cases in which the alleged violations are found to be true, to take the appropriate measures to remedy them.***

***Article 2 of the Convention. Registration of workers' and employers' organizations.*** In its previous comments, the Committee requested the Government to take the necessary measures to revise section 150 of the Labour Act, which allows the central authority of the labour administration a period of 45 days to register a trade union or an employers' organization. While noting that the Government had indicated in a previous report that this period is justified by the fact that the country does not have a modern computerized communications system, the Committee recalls that the excessive duration of the registration procedure represents a serious obstacle to the establishment of organizations, and that this time requirement should be shortened to a reasonable length, for example, not exceeding 30 days. ***The Committee therefore requests the Government to initiate consultations with the social partners with a view to amending section 150 of the Labour Act as indicated, and to provide information on any progress achieved in this regard.***

*Article 3. Penal responsibility of striking workers.* In its previous comments, the Committee requested the Government to take the necessary measures to amend section 268(3) of the Labour Act, under the terms of which any violation of sections 199 (freedom to work of non-strikers), 202(1) and 209(1) (minimum services) constitutes a breach of discipline for which workers who are on strike are liable under both civil and penal law. Noting that the Government's report does not reply to the Committee's comment on this point, the Committee recalls that penal sanctions may only be envisaged where, during a strike, violence is committed against persons or property, or other serious breaches of the law, and only in accordance with the provisions punishing such offences. ***The Committee therefore requests the Government to take the necessary measures to amend section 268(3) of the Labour Act as indicated, and to provide information on any progress achieved in this regard.***

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

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

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

In its previous comments, the Committee noted the 2010 observations of the International Trade Union Confederation (ITUC) referring once again to acts of anti-union discrimination in export processing zones and the consistent violation of collective agreements. ***Recalling that similar observations had already been brought to its attention and noting that the Government has still not provided information in reply, the Committee urges the Government to provide its comments in this respect and to ensure that the provisions of the Convention are applied in this sector.***

*Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference.* In its previous comments, the Committee requested the Government to provide information on the number of complaints received concerning acts of anti-union discrimination and interference, and the amount of the fines imposed, with a view to being able to assess whether the penalties envisaged (between five and ten minimum wages, which may be doubled in the event of repeat offences) are sufficiently dissuasive in practice. The Committee notes with *regret* that the Government has still not provided information on this point. ***The Committee therefore once again requests the Government to provide detailed information on the number of complaints received concerning acts of anti-union discrimination and interference, and the amount of the fines imposed, including in export processing zones which, according to the ITUC, are the areas most frequently subject to anti-union discrimination and interference.***

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

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

## **Myanmar**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)**

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2017, concerning the application of the Convention, as well as that of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (not ratified by Myanmar). In particular, the Committee notes that the ITUC raises concerns about the numerous obstacles to the development of a robust trade union movement and provides a number of examples. The Committee further notes the Government's detailed reply in relation to the cases raised.

*Civil liberties.* In its previous comments, the Committee requested the Government to provide information on developments in the legislative review relating to peaceful assemblies. The Committee notes the Government's indication that a new Law on the Right to Peaceful Assembly and Peaceful Procession was adopted on 4 October 2016 and is in full conformity with citizens' rights and democratic standards, requiring only 24-hour advance notification and repealing sanction provisions. The Committee observes, however, that the Chapter on Rules and the corresponding Chapter on Offences and Penalties might still give rise to serious restrictions of the right of organizations to carry out their activities without interference. ***The Committee requests the Government to provide information on the manner in which this law is applied and any sanctions issued.***

*Labour law reform process.* The Committee recalls that in its previous comments it had requested the Government to provide information on the progress made in labour law reform. The Committee notes the information provided in the Government's latest report that a draft law to amend the Settlement of Labour Disputes Law was discussed with the tripartite partners at the Labour Law Reform Technical Working Group held on 22 July 2017. The Government adds that the penalties in the law are being reviewed and amendments drafted. Capacity-building activities have also been held. The Committee notes, however, the ITUC's observations which, while acknowledging the initial steps taken by the Government to embark upon labour law reform on the basis of tripartite consultation, express concerns about this process, citing the Government's refusal to fully share proposed texts and resistance to addressing major flaws. The ITUC further fears the possibility that amendments proposed by the Government may actually worsen the current legislative framework, referring in particular to views expressed by the Government that informal workers should not have the right to organize, while in fact tens of thousands of workers have already formed unions under the 2011 Labour Organization Law (LOL). ***Given that the Government has not provided any further details on which provisions of the LOL or the Settlement of Labour Disputes Law it is intending to amend nor has it provided any draft texts, the Committee expects that the***

**Government will take into account the Committee's previous comments as recalled below in the reform process, and requests the Government to provide detailed information on the progress made in this regard in its next report.**

*Article 2 of the Convention. Right of workers to establish organizations.* In its previous comments, the Committee had observed that while a minimum number of workers was necessary to form a trade union, it was additionally necessary to show affiliation of 10 per cent of the workers in the trade or activity in order to establish a basic labour organization. **The Committee once again requests the Government to take steps to review the 10 per cent membership requirement with the social partners concerned, with a view to amending section 4 of the LOL so that workers may form and join organizations of their own choosing without hindrance. It further requests the Government once again to indicate the outcome of any review of the impact of the pyramidal structure set out in this section and any measures taken to ensure that the right of workers to form and join organizations of their own choosing is not hindered in practice.**

*Article 3. Right of workers' organizations to elect their officers freely.* The Committee recalls its previous comments concerning certain restrictions for eligibility to trade union office set out in the Rules to the LOL, including the obligation to have been working in the same trade or activity for at least six months and the obligation for foreign workers to have met a residency requirement of five years. **The Committee trusts that these requirements will be reviewed within the framework of the legislative reform process in consultation with the social partners so as to ensure the right of workers to elect their officers freely, and requests the Government to indicate the measures taken or envisaged to amend Rule 5.**

*Special economic zones (SEZs).* The Committee notes the Government's reply to the ITUC's observations concerning the SEZ Law of 2014. The Committee recalls that the ITUC had indicated that the procedures for dispute settlement in the zones were more cumbersome than outside and that labour inspector powers were delegated to SEZ management bodies. The Committee notes the Government's indication that the labour inspectorate can coordinate and cooperate with the concerned SEZ management committees to have jurisdiction in accordance with labour laws and that the LOL and the Settlement of Labour Disputes Law can be enforced in the SEZs. **The Committee once again requests the Government to take any necessary measures to guarantee fully the rights under the Convention to workers in SEZs, including by ensuring that the SEZ Law does not contradict the application of the LOL and the Settlement of Labour Disputes Law in the SEZs. It further requests the Government to provide detailed practical information on the manner in which disputes in the SEZs are settled, and to provide relevant statistics concerning labour inspection in the SEZs, including the number of SEZ inspections carried out by labour inspectors, any violations detected, and the nature and number of sanctions.**

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

## Namibia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)**

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, alleging violation of the right to strike in various sectors. **The Committee requests the Government to provide its comments thereon.**

*Article 2 of the Convention. Right to organize of prison staff.* In its previous observation, the Committee had requested the Government to take all necessary steps to expedite the process for adoption of legislative amendments to ensure that prison staff enjoy the guarantees under the Convention. The Committee notes the Government's indication that a Tripartite Task Working Committee has been established and is currently reviewing the Labour Act together with the prison service issues; an appropriate recommendation is expected on this matter. **The Committee expects that the relevant legislative amendments will soon be adopted in order to ensure that prison staff have the right to establish and join organizations for furthering and defending their interests. It requests the Government to provide information on any progress made in this regard.**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1995)**

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, alleging violations of the Convention in specific enterprises and public institutions. **The Committee requests the Government to provide its comments in this regard.**

*Articles 1 and 4 of the Convention. Adequate protection against anti-union discrimination and promotion of collective bargaining in export processing zones (EPZs).* In its previous observation, the Committee had requested the Government to indicate the steps that it was taking to ensure the full application of the Convention in EPZs in practice, in particular by promoting collective bargaining and effective protection against anti-union discrimination. The Committee notes the Government's indication that the Convention as well as the freedom of association provisions of the Labour Act are fully applicable in EPZs. The Committee welcomes the example of the mining sector provided by the Government

according to which the Mineworkers Union of Namibia (MUN) has been granted exclusive bargaining status in a mineral processing EPZ company. ***The Committee requests the Government to continue to provide examples in practice and to indicate the concrete measures taken to ensure protection against anti-union discrimination and the promotion of collective bargaining in EPZs. The Committee also requests the Government to supply information on the number of complaints alleging anti-union discrimination and their outcome as well as the number of collective agreements signed in the EPZs and the number of workers covered.***

*Article 6. Rights of prison staff.* In its previous observation, the Committee trusted that the Government would take steps to ensure that the prison services enjoy the guarantees under the Convention in the near future, and had requested the Government to provide information on developments in relation to the adoption of new legislation in this regard. The Committee notes the Government's statement in its report on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), for the year 2017, in which it indicates that a Tripartite Working Committee has been established and is currently reviewing the Labour Act, including the prison service issue. ***The Committee expects and firmly hopes that the comments it has been making in this regard for a number of years will be taken into account during the legal review, in order to ensure that prison staff enjoy the rights enshrined in the Convention. It requests the Government to provide information on any progress made in this regard.***

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

## Nepal

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1996)***

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

The Committee takes note of the observations provided by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2017 as well as the Government's reply thereon. With respect to the ITUC's allegations of a brutal attack by police to health workers during a demonstration outside the Parsa District Public Health Office in Birgunj, the Committee notes that the Government states that police intervention was necessary in order to ensure the supply of essential medicines. In this respect the Committee recalls that police intervention should be limited to cases where there is a genuine threat to public order and that governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order. The Committee also recalls that it had previously requested the Government to conduct an investigation in relation to issues highlighted by the ITUC in previous years concerning anti-union dismissals, threats against trade union members and the weakness of collective bargaining given that collective agreements only cover a very small percentage of workers in the formal economy. ***The Committee requests the Government to communicate the findings of such investigation as well as information on the eventual remedies adopted. It also requests the Government to provide its comments with respect to the observations made by Education International in 2014.***

*Legislative reforms.* The Committee notes that a new Constitution was adopted in 2015 and that a new Labour Act (Labour Act 2074), adopted on 4 September 2017, has repealed the Labour Act 1992. The Committee notes with *interest* that sections 17(2)(d) and 34(3) of the new Constitution provide that the rights to form a trade union, to participate in it, and to organize collective bargaining are fundamental rights. It also observes that section 8 of the new Labour Act recognizes the right to form a trade union, to participate in its activities and to acquire its membership or get affiliated with or involved in other union activities.

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* In its previous comments, the Committee had requested the Government to take measures to introduce in the legislation provisions that would explicitly prohibit all acts of anti-union discrimination covered by the Convention. The Committee notes with *regret* that while section 24 of the new Constitution as well as section 6 of the new Labour Act prohibit discrimination, none of them contains an explicit prohibition of discrimination against workers by reason of their trade union membership or participation in trade union activities. The Committee recalls, as it has done previously, that *Article 1* of the Convention guarantees workers' adequate protection against all acts of anti-union discrimination and that the existence of legal provisions prohibiting acts of discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice (see the 2012 General Survey on the fundamental Conventions, paragraph 190). ***The Committee is therefore compelled to repeat its request to the Government to take the necessary measures to introduce in the legislation: (i) an explicit prohibition of all prejudicial acts committed against workers by reason of their trade union membership or participation in trade union activities at the time of recruitment, during employment or at the time of dismissal (e.g. transfers, demotions, refusal of training, dismissals, etc.); and (ii) effective and sufficiently dissuasive sanctions in cases of violation of this prohibition. Reminding the persistence of allegations of acts of anti-union discrimination, the Committee requests the Government to provide information on any progress made thereon in its next report.***

*Article 2. Adequate protection against acts of interference.* The Committee had previously requested the Government to indicate the measures taken or contemplated to introduce in the legislation a prohibition of acts of interference as well as rapid appeal procedures and dissuasive sanctions against such acts. The Committee notes that section 92(1) of the new Labour Act provides that employers and trade unions shall not perform or cause to perform any unfair labour practice and welcomes that section 92(2)(e) provides that, any act by the employer regarding intervention or cause to intervene in the activities relating to the formation, operation and administrative functions of trade unions, shall be deemed to be unfair labour practice. The Committee also notes that section 162 of the said Act, provides that where any person, employer, worker or officer acts in violation of the Act, the person affected by such act or the concerned trade union, with written consent of the affected person, may file a complaint to the competent authority having the power to decide within six months from the date of such act. ***Emphasizing the importance of ensuring effective protection against acts of interference and sufficiently dissuasive sanctions against such acts, the Committee requests the Government to provide further information on the sanctions applied in cases of acts of interference as well as on statistics on the number of complaints examined, the duration of the procedures and the type of penalties and compensation ordered.***

*Article 4. Promotion of collective bargaining.* The Committee notes that section 116.1 of the new Labour Act provides that any enterprise employing ten or more workers shall have a collective bargaining committee that may submit collective claims or demands in writing to the employer on issues relating to the interest of workers. It notes that such a committee is comprised of: (a) a team of representatives appointed for negotiation on behalf of the elected authorized trade union of the enterprise; (b) where an election for the authorized trade union could not be held or the term of the elected authorized trade union has expired, a team of representatives nominated through a mutual agreement of all the unions in the enterprise; or (c) where an authorized trade union or a team of representatives could not be formed, a team of representatives supported with the signatures of more than 60 per cent of the workers working in the enterprise. The Committee recalls that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may undermine the principle of the promotion of collective bargaining set out in the Convention. In addition, it has noted in practice that where there exists a representative trade union and it is active within the enterprise or branch of activity concerned, the authorization for other worker representatives to bargain collectively not only weakens the position of the trade union, but also undermines ILO rights and principles on collective bargaining. ***In order to fully evaluate the conformity of section 116.1 of the new Labour Act with the Convention, the Committee requests the Government to specify the conditions under which trade unions are authorized to bargain collectively and to provide information on the number of direct agreements concluded with non-unionized workers in comparison with the number of collective agreements signed with trade unions.***

The Committee notes that the new Labour Act contains special provisions with respect to collective bargaining for trade union associations which are active in the tea estate, carpet sector, construction business, labour provider, transportation sector or any other group of manufacturers or service providers with similar or related activities. Section 123 of the Act stipulates that those trade union associations may, by forming a collective bargaining committee, submit collective bargaining claims or demands to the employers' association of concerned group of industries. Section 123(3) provides that in those enterprises it is prohibited to submit collective claims or demands and entering into agreement pursuant to the abovementioned sections of the Chapter on Settlement of Collective Disputes of the Labour Act. The Committee also notes that, as stipulated in section 123(4), in cases concerning such enterprises, the Ministry may issue an order to submit collective claims or demands and negotiate within a specified time. The Committee recalls that 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. The Committee also recalls the need to ensure that collective bargaining is possible at all levels and that 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 (see General Survey, op. cit., paragraphs 200 and 222). ***Highlighting that when collective bargaining takes place at different levels, coordination mechanisms can be put in place, the Committee requests the Government to take the necessary measures to amend section 123 of the new Labour Act so that the principle of the autonomy of the parties is respected and 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.***

*Compulsory arbitration.* The Committee recalls that its previous comments concerned provisions from the draft National Labour Commission Act, a draft that has not been adopted, as well as section 30 of the Trade Union Act, which gives special powers to the Government to restrict trade union activities considered against the economic development of the country. With respect to the latter, the Committee had requested the Government to indicate the measures taken so as to ensure that compulsory arbitration is not imposed at the initiative of the authorities where they consider that the country's economic development so requires. The Committee observes that the new Labour Act contains provisions relating to compulsory arbitration. As provided for in section 117, the Collective Bargaining Committee shall hold consultations on the claims submitted and that, if an agreement is reached, it shall be binding for both parties. For its part, sections 118 and 119(1) provide that, if no agreement is reached and where the dispute is not resolved through mediation, it shall be settled through arbitration as follows: (i) if the parties agree to settle the dispute through arbitration; (ii) if it concerns an enterprise providing essential services; (iii) if it concerns an enterprise located inside the special economic zone; or (iv) if it concerns a situation where strike is prohibited because there is a state of emergency declared as per the Constitution. For its part, section 119(2) also provides that, where the Ministry has a ground to believe that a financial

crisis may take place in the country as a result of ongoing or possible strike or lockout or believes that the dispute needs to be settled by arbitration, the Ministry, irrespective of the state of the collective dispute, may issue an order for the settlement of the dispute through arbitration. In this regard, the Committee recalls that, pursuant to the promotion of free and voluntary negotiation established by *Article 4* of the Convention, compulsory arbitration to end a collective labour dispute is acceptable only if it is at the request of both parties involved in a dispute or in the case of disputes in the public service involving public servants engaged in the administration of the State (*Article 6* of the Convention), in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of acute national crisis. The Committee *regrets* that the newly adopted Labour Act is not in line with this principle. ***It therefore once again requests the Government to take the necessary measures to ensure that, in accordance with the Convention, compulsory arbitration can only take place in the situations mentioned above.***

*Composition of arbitration bodies.* The Committee notes that section 119(3) of the new Labour Act provides that, for all cases in which arbitration takes place, the Ministry of Labour and Employment may form an arbitration panel ensuring representations from workers, employers and the Government. The Committee also notes that section 120 provides that, for the purpose of settling collective disputes through mediation and arbitration, the Government may form an independent labour arbitration tribunal and that provisions in relation to such tribunal shall be prescribed. ***Recalling that arbitration bodies shall be fully independent, the Committee requests the Government to provide detailed information with respect to the composition of the said arbitration panel and tribunal and specifically to indicate the procedure undertaken to select the worker and employer representatives. It also requests the Government to clarify the difference between the arbitration panel (section 119(3)) and the arbitration tribunal (section 120).***

*Measures to promote collective bargaining.* ***The Committee requests the Government to provide, in its next report, detailed information on the measures taken or contemplated to promote collective bargaining as well as on the impact of the recently adopted Labour Act on collective bargaining and agreements reached. In this respect, the Committee requests the Government to provide data on the number of collective agreements concluded, their scope and sectors concerned and the number of workers covered.***

## Netherlands

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

The Committee notes the observations received on 31 August 2017 from the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP), referring to issues under examination by the Committee as well as to alleged acts of intimidation against union members; alleged acts of anti-union discrimination against workers working through agencies, on zero-hour or short fixed-term contracts or as dependent self-employed; and the alleged undermining of the FNV's collective bargaining rights by allowing for collective agreements applicable to all workers to be concluded by less representative or yellow unions. ***The Committee requests the Government to provide its comments in this respect.***

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination other than dismissal.* The Committee previously requested the Government to provide details on the complaints and procedures on anti-union discrimination in recruitment as well as on the outcome of the proceedings. Furthermore, noting the lack of information concerning the protection against acts of anti-union discrimination during employment (other than dismissal), the Committee had repeatedly invited the Government to initiate discussions with the most representative employers' and workers' organizations with a view to broadening the protection against acts of anti-union discrimination of both trade union members and representatives. The Committee notes with *regret* that the Government confines itself to stating that it abides by the previously mentioned means of protection and that there are no new developments. The Committee also notes the FNV's indications that anti-union discrimination in recruitment is not separately monitored, and that the discussions with the social partners have not been initiated. ***In order to enable it to assess whether adequate protection against acts of anti-union discrimination in recruitment is provided in practice, the Committee requests the Government to supply detailed information on the number of complaints of anti-union discrimination brought to the Recruitment Code Complaints Committee of the Dutch Association for Personnel Management and Organization Development (NVP), to the courts or to other competent authorities, the average duration of the relevant proceedings and their outcome, as well as the types of remedies and sanctions imposed in such cases. The Committee further requests the Government to engage in a national dialogue with the most representative employers' and workers' organizations with a view to ensuring a comprehensive protection of both trade union members and representatives against all acts of anti-union discrimination, including during employment (such as transfer, relocation, demotion or deprivation or restriction of remuneration, social benefits or vocational training).***

*Article 4. Promotion of collective bargaining.* The Committee had previously requested the Government to provide information on the outcome of the judicial process initiated by an FNV affiliate against the Government due to an opinion published by the Netherlands Competition Authority (NMA) discouraging collective bargaining on the terms and conditions of contract labour (that is work performed by individuals who do not necessarily work under the strict authority

of the employer and who may have more than one workplace). The Committee notes that the European Court of Justice (ECJ), at the request of the Court of Appeal of The Hague, issued a preliminary ruling on 4 December 2014 in the proceedings *FNV Kunsten Informatie en Media (KIEM) v. the State of the Netherlands*. The ECJ generally ruled that, under European Union law, it is only when self-employed service providers who are members of one of the contracting employees' organizations and perform for an employer, under a works or service contract, the same activity as that employer's employed workers, are "false self-employed" (in other words, service providers in a situation comparable to that of those employed workers), that a provision of a collective labour agreement, which sets minimum fees for those self-employed service providers, does not fall within the scope of Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) (prohibition of agreements restricting competition). The ECJ then ruled that it is for the national court to ascertain whether this is the case. The Committee notes that the Court of Appeal of The Hague subsequently issued a decision on 1 September 2015, pursuant to which competition law does not preclude a collective agreement from requiring an employer to apply the provisions of the collective agreement to self-employed substitutes (that is musicians substituting for members of an orchestra) as referred to in the specific case, and, in particular, to apply certain (minimum) rates.

The Committee notes that the Government states in this regard that: (i) competition law in the Netherlands provides for several exceptions to the cartel ban, one of which relates to collective labour agreements, provided that they are the result of negotiations between employers' and employees' organizations, and that they contribute directly to improving workers' employment and working conditions; and (ii) the ECJ has ruled that this exception also applies to collective agreements for "bogus self-employed persons" (service providers in similar positions to employees), since, according to the Court, they do not fall within the concept of "entrepreneurs" under European competition law, even if they are genuine self-employed under national law. The Committee observes that the Government concludes from the ECJ ruling that collective agreements for this group of "self-employed" persons can be made on their behalf. On the other hand, the Committee notes the Government's indication that this case has not yet led to amendments to legislation or regulations. Furthermore, the Committee notes from the FNV's observations that its affiliate FNV-KIEM obtained, in its proceedings against the Government, a favourable ruling from the ECJ with regard to the collective bargaining rights for self-employed workers, and that, in that specific case, the trade union has been granted the right to negotiate tariffs for a large part of this group, namely those self-employed workers that work side by side with regular employees. The Committee notes however that, according to the FNV, the Netherlands Authority for Consumers and Markets (ACM) (former NMA) still refuses to more broadly acknowledge the collective bargaining rights of self-employed workers that work side by side with regular employees, denying both those workers and the employees a fair income and allowing or even promoting underbidding, and that the Ministry of Social Affairs follows the ACM without giving consideration to the effects of the ruling on collective bargaining rights.

The Committee recalls that *Article 4* establishes the principle of free and voluntary collective bargaining and the autonomy of the bargaining parties with respect to all workers and employers covered by the Convention. As regards the self-employed, the Committee recalls, in its 2012 General Survey on the fundamental Conventions, paragraph 209, that the right to collective bargaining should also cover organizations representing self-employed workers. The Committee is nevertheless aware that the mechanisms for collective bargaining applied in traditional workplace relationships may not be adapted to the specific circumstances and conditions in which the self-employed work. ***The Committee invites the Government to hold consultations with all the parties concerned with the aim of ensuring that all workers including self-employed workers may engage in free and voluntary collective bargaining. Considering that such consultations will allow the Government and the social partners concerned to identify the appropriate adjustments to be introduced to the collective bargaining mechanisms so as to facilitate their application to self-employed workers, the Committee requests the Government to provide information on the progress achieved in this respect.***

## Nicaragua

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1967)***

*Article 3 of the Convention. Right of workers' organizations to organize their activities in full freedom and to formulate their programmes.* The Committee recalls that for several years it has been referring to the need to take steps to amend sections 389 and 390 of the Labour Code, which provide that collective disputes shall be referred to compulsory arbitration when 30 days have elapsed since the calling of the strike. In this regard, the Committee notes the Government's indication that: (i) negotiation boards are set up as a matter of urgency whenever socio-economic demands arise in a workplace; and (ii) there have been no changes in national law and practice to enable amendments to sections 389 and 390 of the Labour Code. The Committee is bound to note with *regret* once again the lack of progress regarding the amendment of the abovementioned provisions of the Labour Code. The Committee recalls that the imposition of compulsory arbitration to end a strike in cases other than those where strike action may be limited or even prohibited is contrary to the right of workers' organizations to freely organize their activities and formulate their programmes. ***The Committee therefore once again requests the Government to take the necessary steps to amend sections 389 and 390 of the Labour Code so as to ensure that compulsory arbitration can only occur in cases where strike action may be limited or even***

*prohibited, namely in disputes within the public service concerning public servants exercising authority in the name of the State, in essential services in the strict sense of the term, or in situations of acute national crisis.*

*Article 11. Protection of the right to organize.* The Committee welcomes the information provided by the Government on various initiatives aimed at promoting the right to organize and which include, inter alia, the distribution of handbooks for establishing and updating trade unions, the protection of the right to organize of own-account workers, and the promotion of gender equality policies within the trade union movement. The Committee also notes the Government's indication that, as a result of the policies to promote and foster unionization, a total of 62 new trade union organizations with 2,469 members were established in 2016, and 1,031 trade unions with 71,847 workers were updated. *The Committee duly notes this information and requests the Government to provide information concerning the implementation of the abovementioned policies.*

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

*Article 4 of the Convention. Promotion of collective bargaining.* In its previous comments, the Committee asked the Government to provide information about the promotion of collective bargaining in all areas at national level, including export processing zones (EPZs). In this regard, the Committee notes the Government's indication that: (i) in 2016, the gender dimension was promoted in collective bargaining, particularly through the signature of 57 collective agreements that included clauses specifically for the benefit of 47,609 women workers; (ii) in 2016, a total of 73 collective agreements were registered at national level, which have an impact on the standard of living of 640,536 persons; (iii) as regards the special regulations concerning EPZs, the Ministry of Labour has reduced its participation in negotiations for collective agreements, leaving direct dialogue between the parties to take place in bipartite committees; only where no bipartite agreements are reached are tripartite committees formed; and (iv) the readjustment of the minimum wage for workers in this sector has been carried out with the participation of the Tripartite National Committee on Export Processing Zones.

*The Committee notes with interest the abovementioned initiatives to promote collective bargaining and requests the Government to continue taking steps to expand collective bargaining in all spheres, including EPZs. The Committee requests the Government to send information on any developments in this regard, including the number of collective agreements signed and in force in EPZs, and also the number of workers covered by them. The Committee requests the Government to provide additional information on the nature of the clauses of collective agreements that provide for specific benefits for women and to indicate the number of women workers covered by these agreements.*

## **Niger**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)**

*Article 2 of the Convention. Scope of application.* In its previous comments, the Committee requested the Government to take the necessary steps to amend section 191 of the Labour Code, which provides that workers over 16 years of age but under the age of majority may join trade unions, to ensure that the minimum age for membership to a trade union is the same as that fixed by the Labour Code for admission to employment (14 years, according to section 106 of the Code). *While noting the commitment given by the Government to take this request into consideration when amending Act No. 2012-45 issuing the Labour Code, the Committee requests the Government to provide information on all progress made in this regard.*

*Articles 3 and 10. Provisions on requisitioning.* In its previous comments, the Committee recalled that it had been asking the Government for many years to amend section 9 of Ordinance No. 96-009 of 21 March 1996 regulating the exercise of the right to strike of state employees and local authority employees so as to limit the restrictions on the right to strike to public officials exercising authority on behalf of the State, to essential services in the strict sense of the term, or to cases in which work stoppages may provoke an acute national crisis. The Committee noted a number of steps taken by the Government to determine the representativeness of employers' and workers' organizations on the basis of occupational elections. The Committee notes the Government's indication that the occupational elections process, the purpose of which is to revive the ordinance review mechanism, is proceeding normally and that it remains open to negotiations with the social partners. *Recalling that it has been requesting action on this matter for a number of years, the Committee invites the Government to take all necessary measures to accelerate this process and requests it to provide information on any developments in this regard.*

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

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

*Articles 1, 2, 3 and 6 of the Convention. Adequate protection against acts of anti-union discrimination and interference. Public servants not engaged in the administration of the State.* In its previous comments, the Committee requested the Government to take the necessary measures for the adoption of specific legislative measures providing

adequate protection for public servants not engaged in the administration of the State against acts of anti-union discrimination and interference and, for that purpose, establishing expeditious and effective penalties and procedures. The Committee notes that the Government confines itself to indicating that freedom of association and the right to collective bargaining are recognized by article 9 of the Constitution of 10 November 2010 and that several categories of personnel who are not governed by either the provisions of the Labour Code or of the General Public Service Regulations have established trade unions. **The Committee therefore once again requests the Government to take the necessary measures without delay to include in the legislation provisions protecting public servants not engaged in the administration of the State against acts of anti-union discrimination and interference and to provide information on any developments in this regard.**

*Article 4. Promotion of collective bargaining.* The Committee takes due note of the Government's indications in reply to its previous comments concerning the conditions for the deposit, publication and translation of collective agreements established by sections 52–54 of the Regulations of the Labour Code. The Committee also notes the Government's indication that it is the organizations of employers and workers which appoint their representatives to the bargaining commissions referred to in section 242 of the Labour Code.

*Criteria for the representativity of employers' and workers' organizations.* In its previous comments, the Committee requested the Government to provide information on the holding and outcome of occupational elections with a view to determining the representativity of workers' and employers' organizations. The Committee notes that the Government refers to a document prepared by the National Occupational Election Commission (CONEP), entitled *Origins of occupational elections in Niger*, of which it has not however provided a copy. **Recalling that the procedures for determining the representativity of workers' and employers' organizations must be based on objective, precise and pre-established criteria and implemented by an independent body which has the confidence of the parties, the Committee once again requests the Government to provide information on the organization and holding of occupational elections and their results.**

*Articles 4 and 6. Right to collective bargaining of public servants not engaged in the administration of the State.* In its previous comments, after noting with satisfaction the conclusion between 2012 and 2014 of four major collective agreements concerning workers in both the public and private sectors, the Committee invited the Government to ensure that the legislation in force is aligned with the practice relating to the recognition and exercise of the right to collective bargaining in the public sector and to continue providing information on the number of collective agreements signed, the sectors concerned and the workers covered. **In the absence of further information from the Government on these two issues, and recalling that it is not aware of precise legislative provisions guaranteeing the right to collective bargaining of public servants not engaged in the administration of the State who are governed by a specific legislative or regulatory status, and accordingly excluded from the application of section 252 of the Labour Code, the Committee reiterates the requests referred to above.**

## Nigeria

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

The Committee recalls that it had previously requested the Government to provide its comments on the allegations made by the International Trade Union Confederation (ITUC) of denial of the right to join trade unions, massive dismissals for trying to join trade unions, mass persecution and arrests of union members and other violations. The Committee notes that, in its report, the Government generally indicates that it continuously ensures that the rights of workers are protected through strict compliance with the Trade Unions Act and the Labour Act, thus ensuring a peaceful industrial relations climate in the country and that the presence of security agents in any gathering is due to security risks such a gathering might have posed. The Committee takes note of the observations of the ITUC and the Nigeria Labour Congress (NLC) received on 1 and 8 September 2017, respectively, containing similar allegations of arrests, reprisals and dismissals against union leaders and members. **The Committee regrets that the Government limits itself to a general statement and once again requests the Government to provide a detailed reply on each specific allegation made by the ITUC in 2015, 2016 and 2017, as well as on the observations made by the NLC in 2017.**

*Civil liberties.* The Committee had previously requested the Government to provide detailed information on the results of the judicial proceedings regarding the prosecution of the eight suspects arrested in connection with the assassination of Mr Alhaji Saula Saka, the Lagos Zonal Chairman of the National Union of Road Transport Workers. The Committee notes the Government's indication that, on 5 May 2017, the Federal Ministry of Labour and Employment requested the Inspector General of Police for an update on the judicial process and was awaiting the reply. **Recalling that the events occurred in 2010, the Committee deeply regrets that no resolution has been reached and therefore urges the Government to provide detailed information on the results of the judicial proceedings, and, in the case of conviction, on the nature and implementation of the sentence.**

*Article 3 of the Convention. Right of workers to join organizations of their own choosing.* In its previous comments, the Committee had noted that the dispute between the Association of Senior Civil Servants of Nigeria (ASCSN) and the Nigeria Union of Teachers (NUT), with regard to the allegation that, teachers in federal educational

institutions have been coerced to join the ASCSN and denied the right to belong to the professional union of their own choice, was referred to the National Industrial Court of Nigeria (NICN). The Committee had noted the Court's judgment of 20 January 2016, according to which: (i) the right of choice of a trade union to join is not absolute, as section 8 of the Trade Unions Act provides that "the qualification for membership of a trade union which shall include the provision to the effect that a person shall not be eligible for membership unless he or she has been normally engaged in the trade or industry which the trade union represents"; (ii) however, any worker who wishes to disassociate from the ASCSN can write to the employer stating so and directing that the deduction of the check-off dues be stopped; and (iii) he or she can then join the NUT. The Committee had requested the Government to provide information on the practical application of section 8 of the Trade Unions Act, including the frequency of workers exercising their option to disassociate from a legislatively assigned trade union and any complaints filed in this regard, and to take any necessary measures to ensure the full respect of the right of workers to establish and join organizations of their own choosing. The Committee notes the Government's indications that according to section 12(4) of the Trade Unions Act and sections 9(6) and 5(3) of the Labour Act: (i) membership of a trade union by employees shall be voluntary; (ii) no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member; (iii) no contract shall make it a condition of employment that a worker shall or shall not join a trade union; and (iv) the workers have the right to opt out of a trade union in writing. The Government further indicates that following the NICN's judgment, some of the education officers displeased with it have exercised their right to opt out of the ASCSN. ***In light of the information provided by the Government, the Committee requests it to continue to provide information on the practical application of the abovementioned provisions and in particular, whether teachers of the federal education institutions continue to be automatically affiliated to the ASCSN (albeit with an option of subsequent dissociation). It further requests the Government to engage with the relevant organizations with a view to amend section 8 of the Trade Unions Act so as to ensure the right of workers to establish and join organizations of their own choosing.***

*Freedom of association in export processing zones (EPZs).* The Committee recalls that its previous comments related to issues of unionization and entry for inspection in the EPZs, as well as to the fact that certain provisions of the EPZ Authority Decree, 1992, make it difficult for workers to join trade unions as it is almost impossible for worker representatives to gain access to the EPZs. The Committee had noted the establishment of a tripartite committee under the chairmanship of the Federal Ministry of Labour and Employment to review and update the Federal Ministry of Labour and Productivity Guidelines on Labour Administration and Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector and to incorporate emerging trends in the world of work. The Committee had expressed the hope that concrete measures would be taken in order to ensure that EPZ workers enjoy the right to establish and join organizations of their own choosing, as well as other guarantees under the Convention. The Committee notes the Government's indication that workers in EPZs are now exercising their right to join a trade union of their own choosing and labour officers have been accessing the EPZs to carry out routine labour inspection. The Committee *regrets*, however, that the Government does not provide any information on the review and update of the guidelines related to the provisions of the EPZ Authority Decree (1992). ***The Committee requests the Government to provide, without delay, information on the review and update of the ministerial guidelines. The Committee further requests the Government to provide statistics on the number of trade unions operating in EPZs and the membership thereof.***

*Articles 2, 3, 4, 5 and 6.* The Committee recalls that in its previous comments, it had requested the Government to amend the following provisions:

- section 3(1) of the Trade Union Act, which requires a minimum of 50 workers to establish a trade union, so as to explicitly indicate that the minimum membership requirement of 50 workers does not apply to the establishment of trade unions at the enterprise level (while this minimum membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprises organizations, particularly in small enterprises);
- section 7(9) of the Trade Union Act, which provides that the Minister may revoke the certificate of registration of any trade union, by repealing the broad authority of the Minister to cancel the registration;
- sections 30 and 42 of the Trade Union Act, which impose compulsory arbitration, require a majority of all registered union members for calling a strike, define "essential services" in an overly broad manner, contain restrictions relating to the objectives of strike action, impose penal sanctions including imprisonment for illegal strikes and outlaw gatherings or strikes that prevent aircraft from flying or obstruct public highways, institutions or other premises, so as to lift these restrictions on the exercise of the right to strike; and
- sections 39 and 40 of the Trade Union Act, which grant broad powers to the registrar to supervise the union accounts at any time, so as to limit this power to the obligation of submitting periodic financial reports, or in order to investigate a complaint.

The Committee welcomes the Government's indication that it has established a Tripartite Technical Committee (TTC) for the purpose of bringing into conformity the relevant sections of the Labour Standards Bill (LSB), Collective Labour Relations Bill (CLRB), Labour Institutions Bill (LIB) and Occupational Safety and Health Bill (OSH Bill) with international labour standards. The Committee notes the Government's indication that five meetings were held and appropriate amendments were made, and that the proposed review of the LSB will give the opportunity to the social partners to consider the amendments to sections 3(1), 7(9), 30, 39, 40 and 42 of the Trade Union Act. ***The Committee***

*expects that the laws referred to above will be adopted in the near future, and that they will take into account the Committee's comments. The Committee requests the Government to provide information on all progress made in this respect, and to furnish a copy of the texts when enacted.*

The Committee notes that there are currently no proposals to amend the following legislative provisions:

- section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee notes that the Government explains that the purpose of this provision is to bring order and good administrative structure of trade unionism in Nigeria. ***Recalling 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 and that trade union unity imposed directly or indirectly by law is contrary to the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 92), the Committee once again requests the Government to take all necessary measures to amend section 3(2) of the Trade Union Act and to indicate all progress made in this regard;***
- section 11 of the Trade Union Act, which denies the right to organize to employees in the Customs and Excise Department, the Immigration Department, the prison services, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications. The Committee notes the indication of the Government that for security reasons, the initial section 11 of the Act has not been modified but a subsection has been added creating Joint Consultative Committees (JCC) in the establishments concerned, which perform similar functions to trade unions. ***The Committee recalls that all workers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing and that the only authorized exception are the members of the police and the armed forces. The Committee once again requests the Government to take measures to amend section 11 so as to bring it into conformity with the Convention;***
- section 8(a)(1), (b) and (g) of the Trade Unions (Amendment) Act 2005 and section 1 of the 1996 Trade Unions (International Affiliation) Act, which require federations to consist of 12 or more trade unions in order to be registered and that the application of a trade union for international affiliation shall be submitted to the Minister for approval. The Committee takes note of the Government's indication that the Trade Unions (International Affiliation) Act provides for the right of any union or central labour organization to affiliate with any international labour organization and that the Nigeria Labour Organization and the Trade Union Congress are members of various international labour organizations. While taking note of this information, the Committee observes that this does not address the Committee's concern. ***The Committee therefore once again requests the Government to take the necessary measures to amend section 1 of the 1996 Trade Unions (International Affiliation) Act, so as to ensure that the international affiliation of trade unions does not require the Government's permission. It further once again requests the Government to take measures to amend section 8(a)(1), (b) and (g) of the Trade Unions (Amendment) Act 2005 so as to lower to a reasonable minimum the number of affiliated trade unions necessary for the registration of a federation.***

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

The Committee notes the new observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, relating to legislative issues and referring to a high number of allegations of anti-union discrimination and of impediments to collective bargaining. The Committee recalls that, since 2010, it has received many observations from trade union organizations containing serious allegations of violations of the Convention in practice and notes with ***regret*** that the Government still has not sent its comments. ***Noting with concern, in particular, the persistence of many and serious allegations of acts of anti-union discrimination and interference, the Committee urges the Government to ensure that the events reported since 2010, through the various comments of the ITUC, Education International (IE) and the Nigeria Union of Teachers (NUT), have been or are being investigated by the public authorities. The Committee urges the Government to send information in this respect.***

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments, initially made in 2012.

In its previous comments, the Committee noted that certain comments submitted by international trade union organizations concerned in particular the fact that: (1) according to the Trade Disputes Act, certain categories of workers are denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Minting Company Limited, the prison services and the Central Bank of Nigeria) and therefore are deprived of the right to collective bargaining; (2) every agreement on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Council Acts and to the Trade Dispute Act (it is an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister); (3) section 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions but rather by the authorities managing these zones; and (4) section 3(1) of the same Decree makes it very difficult for workers to form or join trade unions as it is almost impossible for workers' representatives to gain free access to the export processing zones (EPZs).

The Committee had noted that the Government had indicated that: with respect to point (1), the Collective Relations Bill has taken care of the mentioned exemptions from the rights to organize and bargain collectively; and as regards points (3) and (4),

unionization has commenced, for example, the Amalgamated Union of Public Corporations, Civil Service, and Technical and Recreational Services Employees has started organizing its members within the EPZs. The Committee takes note of this information.

Concerning point (2), the Committee had previously noted a similar more recent allegation of the ITUC (2009) that private sector collective bargaining rights are restricted by the requirement of government approval for any collective agreements on wages. The Committee notes that the Government had indicated in its report that this practice seeks to ensure that there is no undue economic disruption in a particular industry as there is usually a benchmark agreed to by the relevant employers and trade unions. In this regard, the Committee recalls that legal provisions which make collective agreements subject to the approval of the Ministry of Labour for reasons of economic policy, so that employers' and workers' organizations are not able to fix wages freely, are not in conformity with *Article 4 of the Convention* respecting the promotion and full development of machinery for voluntary collective negotiations. ***The Committee requests the Government to ensure that the relevant provisions are amended to give effect to the principle of free collective bargaining.***

The Committee had noted the Government's statement that the Collective Labour Relations Bill, which has been elaborated with the technical assistance of the ILO, is still before the National Assembly and will be forwarded when passed. ***The Committee expects that the Collective Labour Relations Act will be in full conformity with the requirements of the Convention. It requests the Government to send the new law once adopted.***

***Lastly, the Committee once again invites the Government to accept an ILO mission in order to tackle the pending issues. The Committee expects that the Government will make every effort to take the necessary action in the near future.***

## Pakistan

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

The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2017, which refer to issues relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and alleged anti-union dismissals, harassment and acts of interference, as well as the observations from the Pakistan Workers Federation (PWF) received on 25 October 2017 referring mainly to legislative issues under examination by the Committee and alleged acts of employer interference through systematic undue promotions. Furthermore, the Committee ***regrets*** that the Government has failed to provide its comments on the 2015 ITUC allegations concerning acts of anti-union discrimination and to fully respond to the 2012 ITUC allegations of anti-union dismissals and acts of interference in trade union internal affairs by employers (intimidation and blacklisting of trade unions and their members). ***Noting with concern the persistence and seriousness of the numerous allegations of acts of anti-union discrimination and interference, the Committee urges the Government to provide its comments on the abovementioned observations and to ensure that investigations are conducted by the public authorities into the relevant 2012, 2015 and 2017 ITUC and PWF allegations.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

***Legislative issues.*** The Committee recalls that, in its previous comments, it had noted: (i) that the 18th Amendment to the Constitution had been enacted, whereby the matters relating to industrial relations and trade unions were devolved to the provinces; (ii) the adoption of the Industrial Relations Act (IRA), 2012, which regulates industrial relations and registration of trade unions and federations of trade unions in the Islamabad Capital Territory and in the establishments covering more than one province (section 1(2) and (3) of the IRA), and the content of which did not address most of the Committee's previous comments; (iii) the adoption in 2010 of the Balochistan IRA (BIRA), the Khyber-Pakhtoonkhwa IRA (KPIRA), the Punjab IRA (PIRA), and the Sindh Industrial Relations (Revival and Amendment) Act, all of which raised similar issues as the IRA. The Committee notes the adoption in 2013 of the Sindh Industrial Relations Act, 2013, (SIRA) which replaces the former industrial relations legislation and the amendment of the BIRA in 2015. It also notes the Government's statement that the responsibility for the coordination of labour-related issues and the responsibility to ensure that provincial labour laws are drafted in accordance with international ratified Conventions lie with the federal Government.

***Scope of application of the Convention.*** The Committee had previously noted that the IRA, BIRA, KPIRA and PIRA excluded numerous categories of workers (enumerated by the Committee in its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)) from their scopes of application, and – as far as the BIRA is concerned – workers employed in tribal areas. The Committee notes that the SIRA contains the same provisions as the KPIRA and PIRA. It also notes the Government's indication that the exclusions are based on the peculiar nature of the workers' organizations and their functioning, and that the list of exclusions has been reduced considerably compared to the former legislation. The Committee emphasizes that the only categories of workers which can be excluded from the application of the Convention are the armed forces, the police and public servants engaged in the administration of the State (*Articles 5 and 6 of the Convention*). The Committee further notes that in its report under Convention No. 87 the Government states that according to the Government of Balochistan, necessary amendments to the BIRA are being proposed, in order to ensure that only armed forces and police are excluded from its scope and allow workers employed in the Provincially Administered Tribal Areas to enjoy freedom of association rights. The Committee notes however that the BIRA, as amended, still excludes tribal areas from its scope of application and retains the exclusions enumerated under Convention No. 87. ***The Committee requests the Government to ensure that it, as well as the Governments of the provinces, take the necessary measures in order to amend the legislation so as to ensure that all workers, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State, fully enjoy the rights enshrined in the Convention.***

With regard to public servants in particular, the Committee had previously noted that the IRA does not apply to workers employed in the administration of the State other than those employed as workmen (section 1(3)(b)), and that the BIRA, KPIRA and PIRA add the words "as workmen employed by the Railway and Pakistan Post". The Committee had requested the Government to specify the categories of workers employed in the administration of the State excluded from the scope of

application of the legislation. The Committee notes that section 1(3)(ii) of the SIRA contains the same provision as the BIRA, KPIRA and PIRA. It also notes the Government's indication that persons employed in the administration of the State means persons engaged in the federal secretariat and various attached departments as well as the federal legislature, and, similarly, persons employed in provincial civil secretariats as well as attached departments and provincial legislatures. While noting that these exclusions would be in line with the Convention, the Committee observes that the wording in section 1(3)(b) of the BIRA, KPIRA, PIRA and SIRA "shall not apply to persons employed in the administration of the State other than those employed as workmen by the Railway and Pakistan Post" could imply that certain persons employed in public enterprises are deemed employed in the administration of the State and excluded from the scope. The Committee recalls 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), and that a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (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 (for instance, employees in public enterprises, municipal employees and those in decentralized entities, as well as public sector teachers). **The Committee requests the Government to indicate whether persons employed in public enterprises are excluded from the scope of application of the industrial relations legislation, and, if so, to specify which categories of persons so employed are excluded, as well as any current or proposed legislation enabling them to fully benefit from the rights afforded by the Convention.**

*Export processing zones (EPZs).* The Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009, had been finalized in consultation with the stakeholders and would be submitted to the Cabinet for approval. The Committee notes with *regret* that the Government provides no further information in this respect. **The Committee urges the Government to provide detailed information on the progress made in adopting the Export Processing Zones (Employment and Service Conditions) Rules, 2009, and a copy thereof as soon as they are adopted.**

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Banking sector.* The Committee had previously requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, imposing sanctions of imprisonment and/or fines on the grounds of the exercise of trade union activities during office hours. The Committee notes with *deep concern* that 14 years after its first observation on the issue, and after having stated on several occasions that legislative measures to repeal section 27-B were being taken, the Government now asserts that this provision is not in contravention with the Convention. **The Committee expects that the relevant amendment will be adopted in the very near future and requests the Government to transmit a copy thereof.**

*Article 4. Promotion of collective bargaining.* The Committee previously noted that, according to section 19(1) of the IRA, and sections 24(1) of the BIRA, KPIRA and PIRA, if a trade union is the only one in the establishment or group of establishments (or industry in the BIRA, KPIRA, PIRA), but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment or industries. The Committee recalls that it had previously requested the Government to amend similar sections which existed under the former industrial relations legislation. The Committee notes that section 24(1) of the SIRA contains the same provision as the BIRA, PIRA and KPIRA. The Committee notes the Government's indication that: (i) the minimum requirement of membership (33.3 per cent of total workers) is to promote democratic principles for the promotion of healthy and popular trade unionism; (ii) since Pakistan follows an industrial relations system where a union, after being elected as collective bargaining agent, is granted the exclusive right to represent all workers, collective bargaining rights cannot be granted to any union in the absence of a referendum process and merely on the basis of its own membership; and (iii) the Government of Balochistan and the Government of Sindh have informed that they are consulting with their respective provincial law departments. The Committee recalls that the determination of the threshold of representativity to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. In this regard, the Committee considers that if no union in a specific negotiating unit meets the required threshold of representativity to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. **The Committee requests the Government to take the necessary measures in order to ensure that if there is no union representing the required percentage to be designated as the collective bargaining agent, collective bargaining rights are granted to the existing unions, jointly or separately, at least on behalf of their own members. The Committee underlines the importance that the Governments of the provinces take measures in the same direction.**

The Committee had previously noted that: (i) shop stewards are either nominated (by a collective bargaining agent) or elected (in the absence of a collective bargaining agent) in every undertaking employing over 50 workers (25 workers in the case of the IRA) to act as a link between the workers and the employer, to assist in the improvement of arrangements for the physical working conditions and to help workers in the settlement of their problems (sections 23 and 24 of the IRA, 33 of the BIRA, 29 of the KPIRA and 28 of the PIRA); (ii) works councils (bipartite bodies), which are established in every undertaking employing over 50 workers, have multiple functions (sections 25 and 26 of the IRA, 39 and 40 of the BIRA, 35 and 36 of the KPIRA, and 29 of the PIRA), and its members are either nominated by a collective bargaining agent or, in the absence of a collective bargaining agent, elected (PIRA) or "chosen in the prescribed manner from amongst the workmen engaged in the establishment" (IRA, BIRA and KPIRA); (iii) management shall not take any decision relating to working conditions without the advice of workers' representatives who can be nominated (by a collective bargaining agent) or be elected (in the absence of a collective bargaining agent) (section 27 of the IRA, 34 of the BIRA, 30 of the KPIRA and 29 of the PIRA); and (iv) joint management boards shall look after the fixation of job and piece-rate, planned regrouping or transfer of workers, laying down the principles of remuneration and introduction of remuneration methods, etc. (these functions are granted to works councils under the PIRA) (sections 28 of the IRA, 35 of the BIRA, and 31 of the KPIRA). The Committee had requested the Government to ensure that it, as well as the Governments of the provinces, take the necessary measures to amend the legislation so as to ensure that the position of trade unions is not undermined by the existence of other workers' representatives, particularly when there is no collective bargaining agent. The Committee notes that sections 28, 29 and 30 of the SIRA contain the same provisions as the PIRA. It also notes the Government's indication that: (i) the position of a single union having less than 33 per cent of the workforce as its membership is not jeopardized through the institutions of shop steward, workers representatives and joint management boards; (ii) workers in these institutions are elected through secret ballot and a union can campaign or canvass the workers to vote for its members for having the highest representation in these institutions; and (iii) moreover, these institutions work even in the

presence of a collective bargaining agent. The Committee considers that, where there is no collective bargaining agent, the fact that the trade union can seek to persuade the workers during the elections to vote for its members to be represented in the above entities does not eliminate the risk of the union being undermined by workers' representatives; moreover, in the case of the works council, its representatives are not elected but "chosen in the prescribed manner from amongst the workmen engaged in the establishment", which aggravates the risk of the union being undermined by workers' representatives. ***The Committee requests the Government to ensure that it, as well as the Governments of the provinces, take appropriate measures to guarantee that, in the absence of a collective bargaining agent, workers' representatives in the above entities are not arbitrarily appointed, and that the existence of elected workers' representatives is not used to undermine the position of the trade unions concerned or their representatives.***

***Compulsory conciliation.*** Having noted that compulsory conciliation is required by law in the collective bargaining process, the Committee had previously observed that the conciliator is appointed either directly by the Government (sections 43 of the BIRA, 39 of the KPIRA, 35 of the PIRA) or by the Commission whose ten members are appointed by the Government, with only one member representing employers and another one representing trade unions (section 53 of the IRA). The Committee had underlined that the system of appointment of the conciliator, as well as the composition of the Commission, could raise questions concerning the confidence of the social partners in the system. The Committee notes that section 36 of the SIRA contains the same provision as the BIRA, KPIRA and PIRA. It also notes the Government's indication that: (i) the role of the conciliator begins after referral of an industrial dispute to him or her under the industrial relations legislation, and as of that moment a government official who is supposed to be a neutral person has to strive for bringing the parties to an amicable solution; and (ii) involving any social partner in appointing the conciliator may call into question the very neutrality of the conciliator and result in legal complications. The Committee considers that dispute resolution proceedings should not only be strictly impartial but also appear to be impartial both to the employers and to the workers concerned. ***The Committee requests the Government to ensure that it, as well as the Governments of the provinces, take measures to guarantee an impartial conciliation mechanism which has the confidence of the parties, for example, by ensuring that there is no opposition by the social partners to the appointment of their conciliators.***

Concerning section 6 of the IRA, the Committee refers to its comments made under Convention No. 87 in its 2016 direct request.

***The Committee expects that all necessary measures will be taken to bring the national and provincial legislation into full conformity with the Convention and requests the Government to provide information on all steps taken or envisaged in this respect.*** The Committee welcomes the ILO project financed by the Directorate-General for Trade of the European Commission to support GSP+ beneficiary countries to effectively implement international labour standards targeting four countries and notably Pakistan. The Committee trusts that the project will assist the Government in addressing the issues raised in this observation.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future. [The Government is asked to reply in full to the present comments in 2018.]***

## Russian Federation

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

The Committee recalls that it had previously requested the Government to provide its comments on the 2012, 2014 and 2015 observations made by the International Trade Union Confederation (ITUC) which referred to cases of anti-union discrimination, interference by employers in trade union internal affairs and refusal to bargain collectively. The Committee notes with ***deep regret*** that once again, no information has been provided by the Government in reply to the numerous allegations of the violation of the Convention in practice. The Committee notes the observations of the Confederation of Labour of the Russian Federation (KTR) received on 31 October 2017, which refer to the matters raised by the Committee below and to numerous cases of alleged violations of the Convention. ***Noting with concern the persistence and seriousness of the numerous allegations of acts of anti-union discrimination and interference, the Committee urges the Government to provide its comments on the abovementioned observations and to ensure that investigations are conducted by the authorities into the 2012, 2014, 2015 and 2017 ITUC and KTR allegations.***

***Articles 1, 2 and 3 of the Convention.*** ***Adequate protection against acts of anti-union discrimination and interference.*** In its previous comments the Committee had noted section 136 of the Criminal Code which punishes acts of discrimination, including anti-union discrimination, and had requested the Government to provide information on the number of people found guilty and convicted under the abovementioned provision, as well as the penalties imposed. The Committee notes the Government's indication that no such information exists. The Government refers, nevertheless, to two cases where the courts have concluded to the absence of anti-union discrimination. The Committee notes, however, that according to the KTR, no one has ever been found guilty and convicted pursuant to section 136 of the Criminal Code; moreover, no one has ever been prosecuted for violation of trade union rights, including acts of anti-union discrimination and interference, in general.

Further in this respect, the Committee recalls that in its previous comments, the Committee had deeply regretted the lack of progress in the implementation of a proposal prepared by the KTR and the Federation of Independent Trade Unions of Russia (FNPR), following an ILO technical mission in the framework of the Committee on Freedom of Association (CFA) Case No. 2758 in 2011, which the Government and employers' representatives had agreed to examine in the framework of the Russian Tripartite Commission for the Regulation of Social and Labour Relations (RTK). The Committee recalls that this proposal refers to the need to draft specific legislative provisions with a view to render protection against violations of trade union rights, in general, and anti-union discrimination, in particular, more effective,

and suggests to create a body with a specific mandate to examine cases of violations of trade union rights, including anti-union discrimination (such a mandate can also be undertaken by an existing body). The proposal also calls for training of relevant bodies and courts on freedom of association. The Committee notes that the Government indicates that these recommendations were considered in 2013 by a tripartite working group of the RTK and in December 2016 and were included in the plan of action for 2017. The Government further indicates that a number of legal acts aimed at the development of social partnership have been adapted, several pieces of legislation amended and a number of activities were held to promote social partnership at the regional level. The Committee notes the KTR's indication that it had tried to engage with the Office of the Prosecutor on a possible way forward in addressing violations of trade union rights, in particular as regards anti-union discrimination and interference to no avail. The Committee further notes the statistics collected by the KTR on the alleged violations of the Convention in 2016–17. The Committee once again **deeply regrets** the lack of progress in the implementation of the KTR–FNPR proposal, and in particular in the drafting of specific legislative provisions protecting workers from anti-union discrimination, as well as the lack of engagement from the relevant authorities in addressing issues of anti-union discrimination and interference. **The Committee once again urges the Government to implement, in consultation with the social partners and without further delay, the proposals to which it had previously agreed. It requests the Government to provide information on the developments in this regard. The Committee further reminds the Government that it can avail itself of the technical assistance of the Office in this respect.**

*Article 4. Parties to collective bargaining.* In its previous comments, the Committee had noted that, pursuant to section 31 of the Labour Code, when an enterprise trade union represents less than half of the workers in that enterprise, other non-unionized representatives could represent workers' interests. Considering that, in these circumstances, direct negotiation between the undertaking and its employees, bypassing sufficiently representative organizations where these existed, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee had noted with concern that despite its several requests, section 31 of the Labour Code had not been amended. The Committee notes the Government's indication that the election of a representative body other than the primary trade union is an extreme measure and occurs only when there is no full representation (more than 50 per cent) of workers' interests by a trade union organization; the Government thus considers that there is no need to amend section 31 of the Code. The Committee recalls that, under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and that negotiation between employers or their organizations and representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. The Committee emphasizes 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 (see the 2012 General Survey on the fundamental Conventions, paragraphs 239–240). The Committee **deeply regrets** that despite its numerous requests, section 31 of the Labour Code has not been amended. **The Committee expects the Government to take immediate and decisive action to amend section 31 of the Labour Code and requests it to provide information on any progress made in this regard.**

**The Committee reminds the Government that it can avail itself of the technical assistance of the Office.**

## Rwanda

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)**

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing.* In its previous comments, the Committee had requested the Government to review the provisions of Ministerial Order No. 11 referred to below to ensure that the procedure for the registration of employers' and workers' organizations is fully in conformity with the Convention:

- *Judicial record.* Under the terms of section 3(5) of Ministerial Order No. 11, of September 2010, an occupational organization of employers or workers, in order to be registered, has to be able to prove that its representatives have never been convicted of offences with sentences of imprisonment equal to or over six months. In the view of the Committee, conviction on account of offences 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 exercise of trade union functions should not constitute grounds for disqualification from holding trade union office.
- *Time limits for registration.* Under the terms of section 5 of Ministerial Order No. 11, the authorities have a time limit of 90 days to process the application for the registration of a trade union. The Committee recalls that a long registration procedure is a serious obstacle to the establishment of organizations without previous authorization, in accordance with *Article 2* of the Convention.

The Committee **regrets** that the Government provides no information on the measures taken or envisaged in this respect. **The Committee once again requests the Government to take the necessary measures in consultation with the**

*social partners to amend the abovementioned provisions, so as to ensure that the procedure for the registration of employers' and workers' organizations is fully in conformity with the Convention.*

*Right of public servants to join a union of their own choosing.* In its previous comments, the Committee had noted Act No. 86/2013, of 19 September 2013, on the General Statute of Public Servants, section 51 of which recognizes the right of public servants to join a union of their own choosing. It had requested the Government to indicate whether public servants, in addition to the right to join a trade union, also enjoy the right to establish a union of their own choosing, and to indicate the relevant legislative provisions. The Committee *regrets* that the Government has not responded to this query. *In the absence of a reply on this matter, the Committee reiterates its previous request.*

*Article 3. Right of organizations to freely organize their activities and to formulate their programmes.* In its previous comments, the Committee had noted that, under the terms of section 124 of the Labour Code, any organization requesting recognition as the most representative organization has to authorize the labour administration to check the register of its members and property. In this respect, the Government had previously indicated that the need to amend this provision was being reviewed in consultation with the social partners, and now indicates that a tripartite meeting agreed that the authorization requirement should remain. The Committee takes due note of this information.

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

## Saint Lucia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1980)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and to join organizations.* For several years, noting that the "protective services" – which include the fire services and prison officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures to ensure the right to organize to fire service personnel and prison staff. The Committee notes that section 325 of the Labour Act 2006 also excludes "protective services" (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to organize in the new legislation. *Noting that the Government indicates in its report that the issue of the right to organize fire service personnel and prison staff would be raised with the Minister of Labour, and recalling previous indications that the workers of these services benefit in practice from this right, the Committee once again requests the Government to indicate the manner in which service personnel and prison staff are assured the organizational rights provided in the Convention.*

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

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

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1980)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 1, 2, 4 and 6 of the Convention.* For several years, noting that the "protective services" – which include the fire services and correctional officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures in order to grant fire service personnel and correctional staff the rights and guarantees provided for in the Convention. The Committee notes that the Labour Act 2006, which entered into force on 1 August 2012, repeals the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999. It further notes that section 355 of the Labour Act 2006 also excludes "protective services" (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to bargain collectively in the new legislation. *Noting that the Government indicates in its report that fire service personnel and prison staff benefit in practice from the right to collective bargaining, and that the issue would be raised with the Minister of Labour, the Committee once again requests the Government to take the necessary measures to expressly grant in the legislation the right to collective bargaining to fire service personnel and correctional staff.*

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

## Sierra Leone

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

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2010. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee notes the allegations of the International Trade Union Confederation (ITUC) in 2013 concerning restrictions to collective bargaining in the mining sector. ***It requests the Government to provide its observations thereon.***

*Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference.* The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body had been received and that the document had just been forwarded to the Law Officers' Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it had been adopted. ***Noting that, according to the information previously sent by the Government, the revision of the labour laws was submitted to the Law Officers' Department in 1995, the Committee requests the Government once again to make every effort to take the necessary action for the adoption of the new legislation in the very near future and to indicate the progress made in this regard.***

*Article 4. The Committee requests the Government to provide detailed information on the collective agreements in force in the education sector and in other sectors.*

***The Committee therefore requests the Government to provide a detailed report on the application of the Convention, accompanied by copies of any legal texts concerning freedom of association adopted since 1992 (year of a draft Industrial Relations Act).***

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

## Somalia

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2014)**

The Committee notes with *concern* that the Government's first report has again not been received.

The Committee had previously noted the 2015 observations of the Federation of Somali Trade Unions (FESTU) alleging restrictions on the exercise of trade union rights, in particular in the telecommunications and media sector, as well as repeated acts of harassment against trade union members. The Committee notes the observations from the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to the same issues which, in the meantime, have been examined by the Committee on Freedom of Association (CFA) in a case brought by the FESTU (Case No. 3113). In this regard, the Committee notes that in its latest conclusions the CFA referred to a communication dated September 2017 whereby the Government: (i) acknowledged that the Ministry of Labour and Social Affairs sought advice from the state Attorney-General over the case and that the latter wrote to relevant ministries and guided concerned authorities to comply with the recommendations of the CFA; (ii) acknowledged that the FESTU, led by Mr Omar Faruk Osman, is the most representative workers' organization in the country; (iii) indicated that it was seeking to resolve political differences between the FESTU and policymakers within the Government; and (iv) requested the assistance of the Office to facilitate a constructive dialogue and to find a solution to the long-standing dispute in a harmonious manner (see Case No. 3113, 383rd Report). ***The Committee welcomes the commitment of the Government to engage in finding solutions with the assistance of the Office. The Committee expects that the Government will also take all necessary measures to provide without delay its first report on the application of the Convention, as well as information on meaningful progress made on the issues raised by the ITUC and the FESTU.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 2014)

The Committee notes with *concern* that the Government's first report has again not been received.

The Committee had previously noted the 2015 observations of the Federation of Somali Trade Unions (FESTU) denouncing interference by the authorities in the activities of trade unions and harassment of trade union leaders, in particular in the telecommunications and media sector. The Committee notes the observations from the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to the same issues which, in the meantime, have been examined by the Committee on Freedom of Association (CFA) in a case brought by the FESTU (Case No. 3113). In this regard, the Committee notes that in its latest conclusions the CFA referred to a communication dated September 2017 whereby the Government: (i) acknowledged that the Ministry of Labour and Social Affairs sought advice from the State General Attorney over the case and that the latter wrote to relevant ministries and guided concerned authorities to comply with the recommendations of the CFA; (ii) acknowledged that the FESTU, led by Mr Omar Faruk Osman, is the most representative workers' organization in the country; (iii) indicated that it was seeking to resolve political differences

between the FESTU and policymakers within the Government; and (iv) requested the assistance of the Office to facilitate a constructive dialogue and to find a solution to the long-standing dispute in a harmonious manner (see Case No. 3113, 383rd Report). *The Committee welcomes the commitment of the Government to engage in finding solutions in relation to the serious allegations of infringement of trade union rights in the telecommunications and media sector, with the assistance of the Office, and expects that the Government will also take all necessary measures to provide without delay its first report on the application of the Convention as well as information on meaningful progress made on the issues raised by the ITUC and the FESTU.*

## Syrian Arab Republic

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

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments made in 2016.

The Committee had previously noted the 2012 observations from the International Trade Union Confederation (ITUC) on the application of the Convention and, in particular, alleging that protests were violently put down throughout the year, that there were deaths and arrests as a result and that the authorities have attempted to stem protests through the increasing use of police and paramilitary force, arrests, trials and the imprisonment of political and human rights activists. The ITUC further alleged that a growing number of strikes are met with violence, injury and often killings. *Noting that the Government's report has not been received, the Committee once again requests the Government to provide its comments on these serious observations.*

*Article 2 of the Convention. Scope of application.* The Committee previously noted that sections 1 and 5(1), (2) and (4)–(7) of Labour Act No. 17 of 2010 excluded certain workers from the scope of the law (independent workers, civil servants, agricultural workers, domestic servants and similar categories, workers in charity associations and organizations, casual workers and part-time workers whose hours of work do not exceed two hours per day). *Reiterating that these workers are covered by the Convention, the Committee once again requests the Government to indicate whether the rights afforded by the Convention are provided to these workers by other legislation, and, if this is not the case, to take measures to recognize to these workers, in the legislation, the rights enshrined in the Convention.*

*Trade union monopoly.* In its previous comments, the Committee had requested the Government to indicate the measures taken or contemplated so as to repeal or amend the legislative provisions establishing a regime of trade union monopoly (sections 3, 4, 5 and 7 of Legislative Decree No. 84; sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 3, amending Legislative Decree No. 84; section 2 of Legislative Decree No. 250 of 1969; and sections 26–31 of Act No. 21 of 1974). The Committee had noted the Government's indication in this regard that the trade union movement was united, from an organizational perspective, in virtue of the decisions taken by trade unions' confederations, and that the Constitution (article 8) recognized political pluralism. *In the absence of the Government's report, the Committee once again requests the Government to indicate the measures taken or contemplated to repeal or amend the legislative provisions which establish a regime of trade union monopoly so as to allow possible trade union diversity.*

*Article 3. Financial administration of organizations.* In its previous comments, the Committee had requested the Government to take the necessary measures to amend section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, so as to lift the power of the Minister to set the conditions and procedures for the investment of trade union funds in financial services and industrial sectors. The Committee noted the Government's indication in this regard that, according to the Constitution, trade unions had the right to supervise and inspect their financial resources, without any interference, through a supervision and inspection body elected directly by trade unions. *In the absence of the Government's report, the Committee once again requests the Government to take the necessary measures to amend section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, and to provide information on any measures taken or contemplated in this respect.*

*Right of organizations to elect their representatives in full freedom.* In its previous comments, the Committee had requested the Government to take the necessary measures to repeal or amend the legislative provisions which determine the composition of the General Federation of Trade Unions (GFTU) Congress and its presiding officers (section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84). The Committee reiterates that it should be up to trade union constitutions and rules to establish the composition and presiding officers of trade union congresses; national legislation should only lay down formal requirements in this respect; and any legislative provisions going beyond such formal requirements constitute interference contrary to Article 3 of the Convention. *The Committee, therefore, once again requests the Government to provide specific information on the measures taken or contemplated to repeal or amend section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84, and to provide information on any developments in this respect.*

*Right of organizations to formulate their programmes and organize their activities.* In its previous comments, the Committee had requested the Government to indicate the progress made with regard to the adoption of draft amendments to provisions which restrict the right to strike by imposing heavy sanctions including imprisonment (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949, issuing the Penal Code). The Committee had further observed that no reference was made to the possibility for workers to exercise their right to strike in the chapter on collective labour dispute of the Labour Act, and had noted the Government's indication that the GFTU was working to modify the Labour Act to ensure coherence with articles of the Constitution granting workers the right to strike. *In the absence of the Government's report, the Committee once again expresses the hope that the law will be amended so as to bring it into line with the Convention and requests the Government to provide information on any developments in this regard.*

*While acknowledging the complexity of the situation prevailing on the ground due to the presence of armed groups and armed conflict in the country, the Committee trusts that the Government will make all efforts to bring its law and practice into conformity with the Convention.*

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

## Turkey

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

The Committee notes the observations of Education International (EI) and the Education and Science Workers' Union of Turkey (EGİTİM SEN) and the Government's reply thereto, as well as those of the International Trade Union Confederation (ITUC) and the report of the Confederation of Progressive Trade Unions of Turkey (DİSK) attached to it, received on 1 September 2017 concerning issues examined by the Committee in its present observation and the Government's reply thereto. The Committee also notes the observations of the Turkish Confederation of Employer Associations (TİSK) transmitted by the International Organisation of Employers (IOE) received on 31 August 2017, the Government's reply thereto, and the observations of the TİSK, the Confederation of Turkish Trade Unions (TÜRK-İŞ), and the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) communicated with the Government's report and the Government's reply thereto. Finally the Committee notes the Government's detailed reply to the 2015 ITUC observations alleging violations of the Convention in practice.

*Scope of the Convention.* In its previous comments, the Committee had requested the Government to indicate the manner in which workers' organizations representing prison staff may participate in negotiations of collective agreements covering their members. The Committee notes the Government's indication that prison staff like all other public servants are covered by the collective agreements concluded in the public service, even though under section 15 of the Act on Public Servants' Trade Unions and Collective Agreement (Act No. 4688) they do not enjoy the right to organize. **Recalling that all public servants not engaged in the administration of the State must enjoy the rights afforded by the Convention, the Committee requests the Government to take the necessary measures, including legislative review of section 15 of Act No. 4688, with a view to guaranteeing that prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect them.**

*Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination.* Following up on the recommendations of the June 2013 Conference Committee on the Application of Standards, the Committee had requested the Government to establish a system for collecting data on anti-union discrimination in both private and public sectors. The Committee notes with **interest** the Government's indication that within the framework of the "Improving social dialogue in working life" project that is being implemented with the technical support of the Office, it is planned to establish such a data system and to provide access to information with a view to ensuring protection against anti-union discrimination. The Committee also welcomes the Government's reply to the Confederation of Public Employers' Trade Unions (KESK) allegations of anti-union discrimination in the appointment of the directors of institutes of education, pursuant to which after the Council of State ruled a stay of execution with regard to some of the provisions of the applicable regulations, new regulations were adopted to govern such appointments. **The Committee requests the Government to continue providing information on the progress made in the establishment of the system for collecting data on anti-union discrimination in private and public sectors and to provide the text of the Council of State ruling and the latest Regulation on the Assignment of the Administrators of Educational Institutions.**

*Articles 1, 2 and 3. Massive dismissals in the public sector under the state of emergency decrees.* The Committee notes the observations of EGİTİM SEN and the DİSK alleging the anti-union dismissals of a great number of their members and officials under the emergency decrees issued following the coup attempt of July 2016, respectively in the education sector and the municipalities. The Committee further notes that both organizations consider that their members have been targeted for measures of suspension and dismissal because of their membership in unions affiliated to their confederations (KESK and DİSK), and that EGİTİM SEN alleges that administrators of many public institutions reported false charges against their members and officials which led to their dismissal and suspension, with a view to weakening their union to the advantage of the so-called "partisan" unions. Accordingly, 1,959 DİSK Genel-İş members were allegedly dismissed from municipalities by decree or decisions of trustees who were appointed to replace deposed mayors, and 1,564 EGİTİM-SEN members including three executive board members and 169 local board members were allegedly also dismissed since the state of emergency was declared. Both organizations observe that no means to challenge these decisions was afforded to the individuals concerned. The Committee also notes that the DİSK indicates that administrative courts and the Constitutional Court declared that they are not competent to examine the cases against dismissals ordered by emergency decrees, and that, while a "State of Emergency Practices Examination Commission" was established, in view of the large number of these cases, the special working group set up to examine them lacks sufficient resources. The Committee notes the Government's replies to the observations of the DİSK and EGİTİM-SEN indicating that in the aftermath of the coup attempt of July 2016, the state of emergency was declared in accordance with the Constitution in order to eliminate the threat against the democratic order and the state of emergency decrees were issued to remove the members of the organizations linked to or affiliated with the Fethullahist Terrorist Organization/Parallel State Structure (FETO/PSS) from the state institutions. The Government refers in particular to section 4 of the Decree-Law No. 667 providing that all state officials who are considered to have affiliation, membership or connection to terrorist organizations and groups designated by the National Security Council as engaged in activities against the national security shall be dismissed from public service pursuant to judicial or disciplinary sanctions, as an extraordinary and final measure aiming to remove the existence of terrorist organizations and other structures considered as acting against national security. The

Government indicates, however, that a Commission to Review the Actions Taken under the State of Emergency was established in order to examine and evaluate, inter alia, the applications of the individuals who were dismissed or discharged from their functions as well as from trade unions, federations and confederations dissolved directly through the state of emergency decrees. The term of duty of the Commission is two years, extendable for one more year. It has seven members and has the authority to obtain all the necessary documents and information from the relevant institutions subject to the condition of respect for the secrecy of the inquiry and State secrets. The Review Commission decides by majority vote. Applications must be lodged within 60 days as of a starting date fixed by the Government with regard to dismissals ordered in accordance with past decrees, and within 60 days as of the entry into force of future decrees ordering further dismissals. Annulment actions against the decisions of the Review Commission can be filed in Ankara Administrative Courts and will be determined by the High Board of Judges and Prosecutors. The Government further indicates that the members of the judiciary removed by the decisions of the high courts are given the right to file a case before the Council of the State.

The Committee wishes to emphasize that the protection against anti-union discrimination afforded to the workers by the Convention, the other ILO fundamental Conventions as well as other human rights instruments, remains valid in all political circumstances. In circumstances of extreme gravity, however, certain guarantees may be temporarily suspended on the conditions that any measures affecting the application of the Convention be limited in scope and duration to what is strictly necessary to deal with the situation in question. In this respect, the Committee notes with **deep concern** that the dismissals undertaken under emergency decrees took place without guaranteeing to the workers concerned the right to defend themselves, and that they amounted moreover to a deprivation of the right to access public office for the trade union members and officials concerned. While duly noting the seriousness of the situation following the coup attempt, the Committee considers that in view of the absence of minimal due process guarantees for the sanctioned persons and the ensuing deprivation of their right to access public office, the abovementioned decrees do manifestly not allow to guarantee that the dismissals of union members and officials have not been decided by reason of their trade union membership and that they do not constitute acts of anti-union discrimination under the Convention. The Committee notes that the Government has since established an ad hoc Commission which is competent to review the dismissals directly based on the state of emergency decrees and will have to deal with all cases in two or even three years, a period of time during which the dismissed trade unionists will remain deprived of their employment and of their right to access public office. The Committee notes with **concern** this situation as well as the allegations that, taking advantage of the absence of procedural means to challenge the dismissals under the state of emergency decrees, certain administrators reported false charges against the trade unionists to provoke their dismissal and to favour other unions. The Committee wishes to emphasize that such practices, if proved, would constitute acts of interference in violation of *Article 2* of the Convention and cannot be justified by the invocation of state of emergency. **While duly noting that Turkey was in a state of acute national crisis following the coup attempt, in view of the above, the Committee urges the Government to ensure that the ad hoc Commission established to review the dismissals is accessible to all the dismissed trade union members who desire its review, and that it is endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. The Committee further requests the Government to ensure that the dismissed unionists do not bear alone the burden of proving that the dismissals were of an anti-union nature, by requiring the employers or the relevant authorities to prove that the decision to dismiss them was based on other serious grounds. In case it is established that the dismissal of trade unionists has been based on anti-union motives, the Committee firmly expects that they be reinstated in their posts and compensated due to the deprivation of their wages, with maintenance of acquired rights. In view of the renewal of the state of emergency for the fifth time on 16 October 2017, the Committee further requests the Government to take the necessary measures to ensure that, in this context, no workers will be dismissed by reason of union membership or because of participation in union activities. The Committee further urges the Government to take the necessary measures to prevent and remedy any eventual abuse of the state of emergency to interfere in trade union activities and functioning and to provide information on the measures taken in this regard. The Committee requests the Government to provide detailed information in this respect.**

*Article 4. Promotion of collective bargaining. Cross-sector bargaining.* In its previous comment, the Committee had requested the Government to review the impact of section 34 of the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356) which provided that a collective work agreement may cover one or more than one workplace in the same branch of activity and to consider its amendment so as to ensure that it does not restrict the possibility for the parties to engage in cross-sector regional or national agreements. The Committee notes the Government's indication that the existing multi-level system of collective bargaining allowing for workplace level, enterprise level and group level collective agreements as well as framework agreements at the branch level is a product of a long and well-established industrial relations system in Turkey and that it does not seem that social partners feel a need for change in this regard. The Committee further notes the observation of the TISK in this regard indicating that during the drafting and adoption phases of Act No. 6356, the social partners reached a consensus on maintaining the existing system that has been in place for almost 30 years and that there is no limitation as to the legality of cross-sector agreements in the Turkish law, as is illustrated by the fact that for years the main provisions of the collective agreements concerning public enterprises have been determined by a framework protocol concluded at the cross-sector level. **Taking due note of the information provided by the Government and the TISK, the Committee requests the Government to indicate whether**

***cross-sector bargaining through regional or national agreements is possible in the private sector under the current legal framework.***

***Requirements for becoming a bargaining agent.*** The Committee notes that section 41(1) of Act No. 6356 initially set out the following requirement for becoming a collective bargaining agent: the union should represent at least 1 per cent of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace and 40 per cent of workers of the enterprise to be covered by the collective agreement. The Committee notes that the Committee on Freedom of Association has referred to it the legislative aspects of Case No. 3021 (see 382nd Report, June 2017, paragraphs 140–145) concerning the impact of the application of Act No. 6356 on the trade union movement and the national collective bargaining machinery as a whole. The Committee notes that the Government recalls that the 3 per cent threshold was decreased to 1 per cent by Act No. 6552 of 10 September 2014 and that additional section 1 of Act No. 6356 stipulating that the 1 per cent membership threshold should be applied as 3 per cent with regard to trade unions that are not members of confederations participating in the Economic and Social Council, was repealed by the Constitutional Court. Therefore the 1 per cent branch threshold applies to all trade unions. The Committee further welcomes the Government's indication that Act No. 6745 renewed the exceptions established by Act No. 6645 for three categories of previously authorized trade unions, dispensing them from the branch threshold requirement, and that ten trade unions benefit from these changes until 6 September 2018. According to the statistics provided in the Government report the rate of unionization in the private sector was 11.96 per cent in January 2016, 11.50 per cent in July 2016, 12.18 per cent in January 2017 and 11.95 per cent in July 2017. Coverage of collective agreements fell from 10.81 per cent in 2014 to 9.21 per cent in 2015. ***Recalling the concerns that had been expressed by several workers' organizations in relation to the perpetuation of the double threshold and noting that the exemption granted to the previously authorized unions is provisional, the Committee requests the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective bargaining machinery as a whole in full consultation with the social partners, and should it be confirmed that the perpetuation of the 1 per cent threshold has a negative impact on the coverage of the national collective bargaining machinery, take the necessary measures to revise the law with a view to its removal.***

In its 2013 comments, the Committee had noted section 42(3) of Act No. 6356 which provides that if it is determined that there exists no trade union which meets the conditions for authorization to bargain collectively, such information is notified to the party which made the application for the determination of competence; and section 45(1) which stipulates that an agreement concluded without an authorization document is null and void. The Committee had recalled in this respect that if no union meets the required threshold, collective bargaining rights should be granted to all unions, at least on behalf of their own members. The Committee notes the observation of TURK-İS indicating that the 50 per cent workplace threshold is difficult to reach in a context where flexible labour systems are proliferating and supported by the legislation. With regard to the enterprise threshold, the Committee notes TURK-İS's indication that in cases where none of the trade unions organizing the workers in the same enterprise represents 40 per cent of the workers, or otherwise in the exceptional cases when two unions reach that same threshold, no union will be considered competent as a collective bargaining agent. The Committee once again recalls 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, all the unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. Likewise, the Committee considers that when more than one union reaches the enterprise threshold, they should be able to engage in voluntary collective bargaining, at least on behalf of their own members. ***In the light of the above, the Committee requests the Government to take the necessary measures to amend the legislation, in consultation with the social partners, and to provide information in this respect.***

In its previous comment, the Committee had requested the Government to provide information on any use of sections 46(2), 47(2), 49(1), 51(1), 60(1) and (4), 61(3) and 63(3) that provide for a variety of situations in which the certificate of competence to bargain may be withdrawn by the authorities and to continue to review their application with the social partners concerned with a view to their eventual amendment, favouring collective bargaining where the parties so desire. The Committee notes the TİSK observation according to which in practice these provisions have no negative effect on the collective bargaining process as unions are very careful about the procedural rules. The Committee further notes that the Government reiterates in its report that these provisions are intended to guarantee, speed up and shorten the bargaining procedure. ***Taking due note of the information provided, the Committee requests the Government to provide information on the dialogue concerning the application of these provisions with the social partners concerned and on any use of these provisions.***

***Settlement of labour disputes.*** As regards mediation, the Committee notes the Government's indication that the power of the competent authority to appoint a mediator in case the parties cannot agree on one was intended to prevent the parties from interrupting the collective bargaining process by obstructing the appointment of a mediator and that there is no request from social partners to change or repeal the mediation system. The Committee takes due note of this information.

***Articles 4 and 6. Collective bargaining in the public service. Material scope of collective bargaining.*** The Committee notes the observations of the Türkiye Kamu-Sen on collective bargaining in the public service under Act No. 4688 as amended in 2012 and the Government reply thereto as well as the 2015 observations of the KESK regarding

the same subject matter. The Committee notes that Türkiye Kamu-Sen and KESK underline that section 28 of Act No. 4688 restricts the scope of collective agreements to “social and financial rights” only, thereby excluding issues such as working time, promotion and career as well as disciplinary sanctions. The Committee notes that the Government indicates in this regard that the 2012 amendments of section 28 were meant to give collective bargaining a significantly wider role in determining the economic and social rights of public servants. The Government adds, however, that when the bargaining parties agree to a need for legislative change, it is necessary to proceed accordingly, since the status of public servants is regulated by law. The Committee recalls that public servants that are not engaged in the administration of the State should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment and that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention. The Committee wishes to further recall however, that the Convention is compatible with systems requiring parliamentary approval of certain labour conditions or financial clauses of collective agreements concerning the public sector, as long as the authorities respect the agreement adopted. ***Bearing in mind the compatibility with the Convention of the special bargaining modalities in the public sector as mentioned above, the Committee requests the Government to take the necessary measures to remove restrictions on matters subject to collective bargaining so that issues which are included in conditions of employment are not excluded from the scope of collective bargaining in the public service.***

With regard to the legal framework set in Act No. 4688, as amended in 2012, and its application, the Committee notes the observations of KESK and Türkiye Kamu-Sen that describe a completely centralized collective bargaining system. The Committee notes that pursuant to section 29 of Act No. 4688, Public Employers’ Delegation (PED) and Public Servants’ Unions Delegation (PSUD) are the parties to the Collective Agreements concluded in the public service. The proposals for the general section of the Collective Agreement are prepared by the confederation members of the PSUD and the proposals for collective agreements in each service branch are made by the relevant branch trade union representative member of the PSUD. The Committee notes the observation of Türkiye Kamu-Sen in this regard, indicating that many of the proposals of authorized unions in the branch are accepted as proposals relating to the general section of the agreement meaning that they should be presented by a confederation pursuant to the provisions of section 29. According to Türkiye Kamu-Sen, this mechanism deprives the branch unions from the capacity to directly exercise their right to make proposals.

The Committee further notes that negotiations on general and branch specific issues take place simultaneously and in a single process during one month. In this regard the Committee notes Türkiye Kamu-Sen’s observation that the fact that branch-specific matters are evaluated in the same process as the matters concerning all public servants in a very short time puts collective bargaining under pressure. It further notes the KESK’s observation that the general and branch specific agreements should be concluded separately. The Committee takes note of the Government’s reply to Kamu-Sen’s observation that bargaining proposals for service branches are discussed in the technical committees established for each branch separately, that these committees’ works are conducted independently from each other and the conclusion of an agreement in one branch does not mean that others are under an obligation to conclude an agreement too. The Committee further notes that pursuant to section 29, at the end of the bargaining process, a single collective agreement comprising a general section and branch-specific sections is signed by the chair of the PED (the Minister of Labour) on behalf of public administration. On behalf of public employees, the chair of the PSUD (representing the confederation that has the majority of members in the public service, currently MEMUR-SEN) signs the general part and the related trade union representatives sign the branch-specific parts. In case of failure of negotiations, the same authorities that are entitled to sign the collective agreement can apply to the Public Employees’ Arbitration Board. The Board decisions will be final and will have the same effect and force as the collective agreement. The Committee notes that Türkiye Kamu-Sen and KESK both object to the fact that although the top three confederations with the most members participate in collective bargaining, only the representative of the majority confederation is entitled to sign the collective agreement and apply to the Arbitration Board. The Committee further notes the KESK’s observation that the majority of the Public Employee Arbitration Board are designated by the employers and the Council of Ministers which creates doubts about the independence of this body.

The Committee considers that where joint bodies within which collective agreements must be concluded are set up, and the conditions imposed by law for participation in these bodies are such as to prevent a trade union which would be the most representative of its branch of activity from being associated in the work of the said bodies, the principles of the Convention are impaired. In this respect, the Committee notes that although the most representative unions in the branch are represented in the PSUD and take part in bargaining within branch-specific technical committees, their role within the PSUD is restricted in that they are not entitled to make proposals for collective agreements, in particular where their demands are qualified as general or related to more than one service branch. ***The Committee requests the Government to ensure that Act No. 4688 and its application enable the most representative unions in each branch to make proposals for collective agreements including on issues that may concern more than one service branch, as regards public servants not engaged in the administration of the State.***

The Committee further notes the KESK’s observation pursuant to which in the local administration services branch, negotiations between the direct employer (local administration) and the unions representing public servants were conducted for a long time prior to the 2012 amendments and had resulted in the conclusion of numerous collective

agreements from which tens of thousands of workers were benefiting, while as a result of the application of amended section 32 of Act No. 4688 the so-called “social equilibrium compensation” agreements are not considered as collective agreements anymore. The Committee takes note of the Government’s indication in this regard that under Act No. 4688, the procedure for concluding a collective agreement for the local administration branch of service is the same as for the other branches, and a collective agreement for this branch should be concluded between the PED and the majority trade union in the branch. The Committee notes in particular the Government observation that if the social equilibrium compensation agreements were considered to be a “collective agreement” it would mean that two collective agreements would be concluded for the same public servants for the same period, which is not possible. The Committee notes that while in practice direct bargaining between the employer and the workers’ unions existed previously in the local administration branch, the Government considers that the amended Act No. 4688 excludes the continuation of that practice. **Recalling that for a number of years it had requested the Government to ensure that the direct employer participates in genuine negotiations with trade unions representing public servants not engaged in the administration of the State, the Committee requests the Government to indicate whether all matters dealt with previously in direct bargaining between the local administration and organizations representing the employees can still be covered through the centralized bargaining system established under the amended legislation; and whether and how the organizations representing employees of local administrations are able to take part in the negotiations under the new system.**

**In addition, the Committee requests the Government to reply to the KESK’s observation concerning the independence of the Public Employees’ Arbitration Board in view of the fact that the majority of its members are designated by the employers and the Council of Ministers.**

**The Committee finally requests the Government to provide, as a matter of urgency, the information requested with respect to the massive dismissals in the public sector examined above.**

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the report of the Confederation of Progressive Trade Unions of Turkey (DİSK) attached to it, received on 1 September 2017 concerning issues examined by the Committee in its present observation, and the Government’s reply thereto. The Committee also notes the observations of the Turkish Confederation of Employers’ Associations (TİSK) and the International Organisation of Employers (IOE) received on 31 August 2017, as well as the observations of the Confederation of Public Servants’ Trade Unions (MEMUR-SEN) and the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) communicated with the Government’s report. The Committee takes due note of the detailed reply of the Government to the 2016 observations of the KESK and TÜRK-İŞ, and the observations of TÜRK-İŞ communicated with the Government’s report.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee takes note of the discussion that took place at the Conference Committee on the Application of Standards, in June 2017, concerning the application of the Convention by Turkey. It takes note in particular of the conclusions of the Conference Committee in which it called upon the Government to ensure that workers’ representatives in the undertaking are protected from prejudicial acts including dismissal and arrest, based on their status or activities as a workers’ representative in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements, in particular during emergency situations, to respond to the allegations of the trade unions concerning the dismissal, arrest and discrimination against workers’ representatives following the proclamation of the state of emergency, and to provide detailed information in response to these conclusions to the Committee of Experts at its next meeting in November 2017.

*Article 1 of the Convention. Massive dismissals of public servants.* The Committee notes that in the course of the discussion at the Conference Committee, the Worker members referred to the dismissal and ban from public service of more than 100,000 employees under emergency decrees. They indicated that trade union officials in public institutions were systematically targeted by allegations leading to their suspension and dismissal; that the grounds for dismissal were always general, alleging membership, connection to, or communication with a terrorist organization, without any individualized justification and evidence being provided or any opportunity given to the concerned persons to defend themselves. The Committee further notes the observations of the Türkiye Kamu-Sen, indicating that a total of 48 representatives and 37 directors of its affiliate unions were dismissed under the state of emergency decrees.

The Committee notes the Government’s indication that the state of emergency was declared by the Council of Ministers and approved by Parliament on 21 July 2016 following the coup attempt of 15 July. The Government refers to the obligation of loyalty of public servants and indicates that the dismissal and suspension of the public servants deemed to be linked with terrorist organizations and structures, entities or groups operating against the national security, is conducted in accordance with the law and the decrees with the force of law. The Government emphasizes that as the coup attempt posed a serious and actual threat to the democratic constitutional order and the national security, it was necessary to take extraordinary measures to eliminate the threat as a matter of urgency. With regard to the review mechanisms available to the dismissed public servants, the Committee notes the Government’s indication that the State of Emergency Actions Review Commission was set up pursuant to Decree No. 685 dated 2 January 2017, to review the state of

emergency decisions. This Commission will review the dismissals of the public servants who claim they are dismissed unfairly by a decree with the force of law. Those dismissed before 17 July 2017 – the date on which the Commission started taking applications – could apply until 14 September, and public servants dismissed after 17 July will have 60 days as of their dismissal date to apply. The decisions of the Commission are open to judicial review in competent administrative courts in Ankara and the last resort will be the European Court of Human Rights. The Government further adds that the public servants who were dismissed by an administrative decision of the public institutions or organizations have the right to apply to the administrative courts. The Committee notes the Government's indication that there have been 35,000 cases where dismissal decisions were revised or suspension orders lifted as a result of ongoing investigations, but notes that it is not indicated which review mechanisms have been used. The Committee further notes the indications in the reports of the DİSK and Amnesty International, transmitted by the ITUC, with regard to the capacity and resources of the Review Commission. In particular it notes the indication that the Commission has seven members and a two-year mandate, and that, in order to process the caseload in that time limit, it will have to take hundreds of decisions per day.

The Committee notes that a great number of workers in the public sector, including an unknown number of trade union representatives, were dismissed on the basis of emergency decrees issued in July, August and September 2016. While some of these public servants were dismissed or suspended by administrative decisions, which were subject to review in the administrative courts, many others were dismissed directly as a result of the publication of their names in lists annexed to the state of emergency decrees. The dismissals of the latter group were not reviewable in courts and no review mechanisms existed in their regard until an ad hoc Review Commission was established and started receiving applications as of July 2017. The Committee recalls that *Article 1* of the Convention requires the effective protection of workers' representatives against dismissals based on their activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. The Committee further recalls that Paragraph 6 of the Workers' Representatives Recommendation, 1971 (No. 143), enumerates measures that can be taken to ensure such an effective protection, including a special recourse procedure open to workers' representatives who consider that their employment has been unjustifiably terminated, and effective remedies in respect of unjustified dismissals. The Committee recalls that there is no provision in the Convention allowing the invocation of a state of emergency to justify exemption from the obligations arising under it, and that the occurrence of circumstances such as an attempted coup does not justify the violation of the right of workers' representatives to enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities. In circumstances of extreme gravity, however, certain guarantees may be temporarily suspended on the condition that any measures affecting the application of the Convention be limited in scope and duration to what is strictly necessary to deal with the situation in question. Once the acute emergency has subsided, measures taken under the state of emergency should be immediately lifted. The Committee notes that the dismissed public servants, including trade union representatives, were definitively banned from public service, and that those who were dismissed as a result of the inclusion of their names in the lists annexed to decrees, did not initially have access to any means of defence or review mechanism. While noting that the situation in Turkey after the coup attempt was one of acute national crisis, the Committee considers that in view of the absence of minimal due process guarantees for the sanctioned workers' representatives and the ensuing deprivation of their right to access public office, the abovementioned decrees do manifestly not allow to guarantee, as provided for in the Convention, that the dismissals of workers' representatives have not been decided by reason of their status or activities as a workers' representative or on union membership or participation in union activities. The Committee notes that the Government has since established an ad hoc Commission which is competent to review the dismissals directly based on the state of emergency decrees and will have to deal with all cases in two or even three years, a period of time during which the dismissed trade unionists will remain deprived of their employment and of their right to access public office. While the Committee notes that the sensitive character of certain public service functions, such as the intelligence services and the armed forces, can justify more drastic measures as a matter of urgency, it considers that, with regard to other branches of public service, measures should be taken to ensure the minimal guarantees of due process. ***While duly noting that Turkey was in a state of acute national crisis following the coup attempt, in view of the renewal of the state of emergency for the fifth time on 16 October 2017, the Committee requests the Government to ensure that workers' representatives are not dismissed on the basis of their status or activities as a workers' representative or of their union membership or participation in union activities, in so far as they act in conformity with existing laws. In case of existence of grounds to believe that a workers' representative has been involved in illegal activities, the Committee requests the Government to ensure that all guarantees of due process are fully afforded. The Committee further requests the Government to provide statistical information on the number of union representatives affected by the dismissals and suspensions based on emergency decrees.***

As regards the Review Commission, the Committee notes with *concern* that it will have to deal with a very significant caseload in two years, which is a relatively short period of time. ***Recalling that compliance with Article 1 of the Convention requires that workers' representatives who consider that their employment has been unjustifiably terminated have access to effective recourse procedures, the Committee requests the Government to ensure that the Review Commission is accessible to all dismissed workers' representatives who desire its review, and that it is endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. The Committee further requests the Government to ensure that the dismissed workers' representatives do not bear***

*alone the burden of proving that the dismissals were discriminatory, by requiring the employers or the relevant authorities to prove that the decision to dismiss them was justified based on other grounds. Finally, the Committee requests the Government to provide statistical information on the number of applications lodged and processed in the Review Commission and administrative courts by affected workers' representatives and to indicate the outcome of those procedures.*

*Arrest of trade union representatives.* The Committee notes the allegations of arrest of trade union representatives both before and after the coup attempt in the statement of Worker members before the Conference Committee, as well as in the latest observations of the ITUC. The Committee observes that these allegations pertain more closely to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and will examine them in its comments on the application of this Convention in 2018.

*[The Government is asked to reply in full to the present comments in 2019.]*

## **Bolivarian Republic of Venezuela**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)**

The Committee notes the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 31 August 2017, relating to matters examined by the Committee in this observation. The Committee notes the Government's reply, received on 24 November 2017.

In its previous comments, the Committee requested the Government to provide its comments on the observations of the Independent Trade Union Alliance (ASI), received in 2016, in relation to the process of its registration in the trade union register. *The Committee requests once again the Government to provide its comments in this respect.*

#### **Complaint made under article 26 of the ILO Constitution concerning non-observance of the Convention**

In its previous comments, the Committee noted that a complaint under article 26 of the ILO Constitution alleging non-compliance with this and other Conventions by the Bolivarian Republic of Venezuela, made by a group of Employer delegates at the International Labour Conference in 2015, was being examined by the Governing Body. The Committee notes that the Governing Body, at its 331st Session (October–November 2017), seriously concerned with and deeply regretting the lack of progress with respect to the decisions taken at its previous sessions: (i) urged the Government of the Bolivarian Republic of Venezuela to engage in good faith in a concrete, transparent and productive dialogue based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations; (ii) urged, for the last time, the Government to institutionalize before the end of 2017 a tripartite round table to foster social dialogue for the resolution of all pending issues, and to invite to that effect an ILO high-level mission led by the Officers of the Governing Body, to meet with government authorities, FEDECAMARAS and their member organizations and affiliated companies, as well as trade unions and leaders from all social sectors; and (iii) suspended the approval of a decision on the appointment of a Commission of Inquiry pending the report of the high-level mission at its 332nd Session (March 2018).

The Committee also notes that, at its 329th Session (March 2017), the Governing Body decided to close the procedure relating to the complaint made in June 2016 by a group of Employer delegates under article 26 of the ILO Constitution alleging non-compliance with this and other Conventions by the Bolivarian Republic of Venezuela and to refer all the allegations of the complaint relating to Convention No. 87 to the Committee on Freedom of Association for their examination (Case No. 3277).

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in relation to Cases Nos 2254 and 3178, in which the complainant organizations are the IOE and FEDECAMARAS. The Committee also notes the conclusions and recommendations in Case No. 3172, a complaint submitted by a trade union.

*Civil liberties and trade union rights. Acts of violence and intimidation against employers' and workers' leaders and organizations.* In its previous comment, the Committee noted once again with concern the seriousness of the issues raised relating to acts of violence, verbal attacks by the highest State bodies and various forms of intimidation and stigmatization targeting employers' and workers' organizations and their leaders and members. The Committee also indicated to the Government that it hoped that criminal responsibility for the murder of the trade union leader, Tomas Rangel, would soon be established and that information would be provided on the outcome of the judicial proceedings. In addition, the Committee reiterated its invitation to employers' and workers' organizations to provide the additional information in their possession on the allegations that they had made, both recent and older, with special reference to the latest denunciations of workers injured during the exercise of their trade union activities in 2016. The Committee requested the Government to provide detailed information, where such information is available on the various allegations concerning acts of violence, detention, intimidation and interference referred to in that comment and in previous comments.

The Committee notes FEDECAMARAS's affirmation that the same serious acts referred to in its previous observations are continuing and that it complains of new and equally serious incidents, alleging that Government spokespersons are continuing to attack it, its affiliates and leaders, with the reinforcement of the continuous and systematic media campaign of stigmatization against it. FEDECAMARAS also alleges that the Government is continuing to blame it for the severe crisis experienced by the country and to link it with the political opposition, that there have been new seizures of assets owned by FEDECAMARAS leaders and that employees and managers of enterprises continue to be detained in relation to the arbitrary implementation of inspections by the State, as well as acts of vandalism against businesses. The Committee notes that FEDECAMARAS also denounces the following recent acts by the Government: (i) the attack by paramilitary groups (known as "collectives") linked to the Government against the headquarters of one of its affiliated organizations, the Stock-rearing Association of the State of Táchira (ASOGATA) on 18 May 2017, and that it is presumed that the attack occurred because ASOGATA organized the free distribution of milk and cheese to the population during the protests in May 2017. FEDECAMARAS adds that the Governor of the State of Táchira threatened the participating livestock breeders with expropriation and labelled them "terrorists and members of criminal and paramilitary groups"; (ii) the seizure of productive lands (the Gólgota ranch), owned by the President of the Federation of Livestock Breeders of Venezuela (FEDEMAGA), Carlos Odoardo Alborno, contrary to the recommendations of the 2014 tripartite mission; (iii) the mandatory sale of goods below their price in the footwear and apparel sector; (iv) the seizure of 4 million toys for distribution through committees set up by the Government, accompanied by the detention of the managers and employees of the enterprise concerned; (v) the detention and trial by military courts of six managers and an executive of a credit company, due to a massive failure at the point of sale; (vi) the arbitrary occupation of bakeries and the imposition of permanent supervision by activists of the governing party together with official bodies; and (vii) fiscal and administrative penalties for calling for a civic stoppage. In addition, the Committee notes the allegation by FEDECAMARAS that it has been subject to intimidation by the President of the Republic for declining the invitation to participate in the discussions of the National Constituent Assembly, which FEDECAMARAS considers to be unconstitutional.

The Committee notes the Government's reply in which it indicates that FEDECAMARAS' assertions are characterized by political motives intended to undermine the institutional order and the legitimacy of the public authorities, based on arguments that are out of context, unfounded, manipulative and tendentious. The Government also affirms that on one hand, FEDECAMARAS is an organization with a history of supporting coups and that, on the other hand, although it groups together a significant number of chambers of commerce, it is not the only employers' organization. The Government adds that there is no policy in Venezuela of aggression, exclusion or intimidation against FEDECAMARAS, its affiliates or leaders, who have not been persecuted, imprisoned, threatened or the victims of any acts of violence based on their status or the exercise of representative activities. With regard to the allegations of attacks by paramilitary groups against the headquarters of ASOGATA, the Government indicates that it has requested information from the Office of the Public Prosecutor, which it will forward in due time, although it considers it irresponsible to link it with those responsible for these acts. With regard to the Gólgota ranch, the Government indicates that it is a remedial measure envisaged in the Lands Act, and the term "expropriation" is being misused for purposes of stigmatization. Finally, the Government emphasizes that the other allegations were discussed at the 329th Session of the Governing Body and the 106th Session of the International Labour Conference. The Committee expresses *deep concern* at the new allegations made by FEDECAMARAS which refer to the persistence of serious acts, including attacks, intimidation, arbitrary measures, the seizure of productive land, the occupation of businesses, administrative inspections by activists of the governing party and acts of violence and vandalism against FEDECAMARAS, its affiliates and members. ***The Committee strongly urges the Government to take the necessary measures to ensure that employers' and workers' organizations can exercise their activities in defence of the interests of their members in a climate free from violence, intimidation and threats that target persons or organizations engaged in the lawful defence of the interests of employers or workers within the framework of the Convention. The Committee also urges the Government, in light of the indications already provided and those which may be added by the employers' and workers' organizations concerned, as well as the investigations conducted by the competent bodies and the respective prosecutions, to provide detailed information on the various allegations of acts of violence, detention, intimidation and interference referred to in this and previous comments.***

*Observations of employers' and workers' organizations on social dialogue.* The Committee notes the indication by FEDECAMARAS that it continues to be excluded from tripartite social dialogue and that the Government is continuing to take unilateral measures which affect enterprise performance, without consulting it, and in this connection refers to various recent measures: (i) the requirement to allocate 50 per cent of agro-industrial production for acquisition by the Government with a view to its distribution through Local Supply and Production Committees (CLAP); (ii) the approval of Decree No. 2535 establishing Workers' Production Boards (WPBs), with the objective of supervising and approving production, noting that government authorities have indicated that they must be supported by the trade unions and that the WPBs are organizations that are established and operate under the discipline of the military civic union; (iii) the establishment by the President of the Republic of the chiefs of staff of the working class; (iv) the creation of feminist labour brigades; and (v) the institutional exclusion of FEDECAMARAS from the National Council for the Productive Economy (CNEP). The Committee also notes that FEDECAMARAS refers to the holding of three meetings in January 2017, and emphasizes that the first meeting did not amount to genuine tripartite social dialogue as it was held in an

atmosphere of accusations and intimidation. FEDECAMARAS indicates that, despite the context, it attended all of the meetings. With regard to the content of the meetings, FEDECAMARAS notes that subjects related to wages were mentioned without detailed information being provided, that it called on the Government to bring an end to the intimidatory attacks so that dialogue could be credible and that it expressed deep concern at the excessive attacks and arbitrary measures taken against the private sector. FEDECAMARAS adds that it emphasized during the meetings the importance of the inclusion of independent trade unions in social dialogue, and received the reply from the Government that social dialogue was only envisaged with the Bolivarian Socialist Workers' Confederation of Venezuela (CBST). The Committee notes that FEDECAMARAS also refers to: (i) the failure to comply with the plan of action for social dialogue which the Government had made a commitment to implement to the ILO Governing Body in March 2016; (ii) the failure to give effect to the commitment made by the Government to the ILO Director-General in November 2016 to include FEDECAMERAS as in the socio-economic round tables, that were to be held under the auspices of the Holy See; and (iii) the failure of the Government to take into consideration the agenda for dialogue proposed by FEDECAMARAS on general labour issues, subjects related to the complaint made under article 26 of the ILO Constitution and macro-economic and enterprise issues. The Committee notes the indication by FEDECAMARAS that, despite all this, it accepted the Government's invitation to hold a meeting on 13 June 2017, but that during an earlier meeting, held on the occasion of the Committee on the Application of Standards of the International Labour Conference, in the presence of the Director-General of the ILO, it had been the subject of serious and unfounded accusations and had been misled as to the presence of independent organizations of workers, for which reason it refused to participate in the meeting held on 13 June. Finally, the Committee notes the general assessment by FEDECAMARAS that there has not been a process of effective dialogue in the terms defined by the ILO, that the organization, its leaders and affiliates have continued to be the subject of intimidatory attacks and that effect has not been given to the recommendations of the ILO supervisory bodies.

The Committee notes the indication by the Government that the President of the Republic has full powers to convene a Constituent National Assembly and that the allegations made by FEDECAMARAS in this respect are very surprising. The Committee notes the Government's reply to the position of FEDECAMARAS in refusing to participate in the meeting of 13 June 2017, indicating that the meeting occurred in the context of a situation of destabilization intended to promote an environment conducive to a coup against the institutional framework and to undermine the authorities and self-determination. The Committee notes the Government's view that: (i) several meetings were held in September and October 2017 between the Ministry of the People's Power for External Trade and International Investment, the Ministry of the People's Power for the Social Process of Labour and FEDECAMARAS; and (ii) during the meeting in October, it was agreed to set out a consensual agenda for dialogue through round tables to discuss subjects of common interest, including wage policy, stability, training and safety and health. Finally, the Committee notes the Government's affirmation that a positive approach will be adopted to dialogue and understanding with the establishment of the tripartite round table and the visit of the ILO high-level mission in accordance with the decision taken by the Governing Body at its 331st Session. The Committee expresses *deep concern* at the persistent absence of social dialogue with FEDECAMARAS and the workers' organizations that are critical of Government policy, which takes the form of the lack of consultation with these organizations before the adoption of important norms and public decisions which affect the economic and social interests of their members. The Committee *deeply regrets* the absence of progress in this respect, despite the repeated comments of the Committee of Experts, the Governing Body and other ILO supervisory bodies and the commitments made by the Government to these bodies in recent years. ***The Committee expects that, as affirmed by the Government, the tripartite round table referred to in the decision of the Governing Body at its 331st Session will be immediately established and will, along with the visit of the high-level tripartite mission decided by the Governing Body, contribute to the establishment of a sound basis for respectful, substantive and lasting dialogue with all the representative employers' and workers' organizations in the country. The Committee requests the Government to provide information on any developments in this respect.***

*Articles 2 and 3 of the Convention. Right of workers to establish the organizations of their own choosing and of such organizations to formulate their programmes. Imposition by the Government of newly created bodies with the participation of representatives of the public authorities.* The Committee notes that, in the context of Case No. 2254, the Committee on Freedom of Association referred to the Committee of Experts the legislative aspects of the case relating to the establishment of WPBs and other similar structures in enterprises, which are prejudicial to freedom of association (see the 383rd Report of the Committee on Freedom of Association, October 2017, paragraph 709). The Committee notes that the system of WPBs was created by Decree No. 2535 of 8 November 2016, which provides that: (i) the authorities shall have the obligation to organize the working class within labour units; (ii) the objective of WPBs is to promote the participation of the working class as protagonists in the management of production within public and private labour units; and (iii) the WPBs shall have a pre-established composition of three workers from the enterprise and four other members, including representatives of the armed forces and Bolivarian militia. The Committee also notes that, in the context of Case No. 2254, the Government indicated that: (i) WPBs are an institution established under the Basic Labour Act (LOTTT) to promote the participation of the working class as protagonists in the management of production; and (ii) the establishment of WPBs in no event replaces or is in opposition to trade unions, but they are intended as a form of active participation by workers in the real and effective monitoring of production processes in work units.

While noting the Government's indications that the purposes of WPBs would differ from those of trade unions, the Committee considers that both the composition of these new bodies that includes the participation of representatives of the

public authorities and the wide definition of their purposes may undermine the right of workers to establish organizations of their own choosing (*Article 2* of the Convention), and may significantly interfere with the right of these organizations to organize their activities and to formulate their programmes in full freedom and may ultimately lead to independent trade unions being replaced by these new bodies. Similarly, the Committee considers that the creation of WPBs is bound to affect the development of collective industrial relations between employers' and workers' organizations in accordance with the various ILO Conventions on freedom of association and collective bargaining ratified by the Bolivarian Republic of Venezuela. ***The Committee therefore expects the Government to take all the necessary measures, as a matter of urgency, to eliminate, in both law and practice, the imposition of structures for the organization of workers that include a participation of representatives of the public authorities such as WPBs. The Committee requests the Government to provide information on any progress made in this respect.***

*Articles 2 and 3. Legislative provisions contrary to the exercise of trade union rights, the autonomy of organizations and their right to organize their activities in full freedom.* The Committee recalls that for several years it has been requesting the Government, in consultation with the most representative organizations of workers and employers, to take the necessary measures to revise the following aspects of the national legislation with a view to bringing them into conformity with the Convention:

- section 388 of the LOTT, to remove the requirement for unions to provide the list of their members to the National Registry of Trade Unions;
- sections 367 and 368 of the LOTT, to remove, in the definition of the objectives to be pursued by trade unions, all those that relate to the specific responsibilities of the public authorities;
- section 402 of the LOTT and other provisions that are in force so that: (i) they do not permit a non-judicial authority (such as the National Electoral Council (CNE)) to decide on appeals respecting trade union elections; (ii) the principle is eliminated in practice and in law that “electoral abeyance” disqualifies trade unions from engaging in collective bargaining; (iii) the requirement is removed to notify the CNE of the electoral schedule; and (iv) the requirement is removed to publish the results of trade union elections in the Electoral Gazette as a condition for their recognition;
- section 387 of the LOTT, so that the eligibility of leaders is not conditional on having convened trade union elections within the prescribed time frame when they were leaders of other trade unions;
- section 395 of the LOTT, to remove the provision in the Act establishing that failure of members to pay their trade union dues invalidates their right to vote;
- section 403 of the LOTT, to eliminate the imposition of specific voting systems on trade unions;
- section 410 of the LOTT, to eliminate the system of holding recall referendums to remove trade union officers;
- section 484 of the LOTT, to ensure that either a judicial or an independent authority determines the areas or activities which may not be subject to stoppages during a strike on the grounds that they prejudice the production of essential goods or services which would cause damage to the population; and
- section 494 of the LOTT, to ensure that the system for the appointment of the members of the arbitration board in the event of a strike in essential services guarantees the confidence of the parties in the system.

***The Committee requests the Government to provide information on any developments in this regard, and full information on the alleged obstacles and excessive delays in the registration of trade unions denounced by the Confederation of Workers of Venezuela (CTV), the National Union of Workers of Venezuela (UNETE), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA) in their observations in 2016.***

## Yemen

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

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Comments from employers' and workers' organizations.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee. The Committee also notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012, alleging that, amidst the uprising and political conflict, there is only one official trade union organization and that the law is not conducive to trade union activities. The ITUC adds that striking teachers were dismissed, striking sanitation workers were injured, and that the offices of the Yemeni Journalists' Syndicates were attacked. ***The Committee requests the Government to provide its comments thereon.***

*The Law on Trade Unions (2002).*

*Article 2 of the Convention.* In its previous comments, the Committee had indicated that the reference to the General Federation of Trade Unions of Yemen (GFTUY) made in sections 2 (definition of “General Federation”), 20 and 21, indicating that “All the general trade unions establish a General Federation entitled the General Federation of Trade Unions of Yemen” could result in making it impossible to establish a second federation to represent workers’ interests. The Committee had noted in its previous comments that the Government indicated that: (1) it has never imposed any prohibition on trade union activities; (2) the law does not stipulate that affiliation to GFTUY is obligatory and there are many other general trade unions which are not in this federation, such as the Trade Union of Doctors, Trade Union of Pharmacists, Education Professions’ Trade Unions, Journalists’ Trade Union and Lawyers’ Trade Union; (3) there is no monopoly in representation since, in the framework of social dialogue, the interlocutor is the most representative trade union; and (4) at the moment, the GFTUY is the most representative association of workers. While noting that the Government did not refer to the possibility of the general trade unions to form a federation different than the GFTUY, the Committee recalls that unification of the trade union movement imposed through state intervention by legislative means runs counter to the principle embodied in *Articles 2 and 11* of the Convention. ***In these circumstances, the Committee once again requests the Government to take the necessary measures to amend the Law on Trade Unions so as to repeal specific reference to the GFTUY, allowing workers and their organizations to establish and join the federation of their own choosing and to indicate the measures taken or envisaged in this regard in its next report.***

The Committee had noted the exclusion from the scope of the Law of employees of high-level public authorities and Cabinets of Ministers (section 4). The Committee had recalled that senior public officials should be entitled to establish their own organizations and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities (see General Survey on freedom of association and collective bargaining, 1994, paragraph 57), and had requested the Government to indicate whether the categories of workers referred to in section 4 of the Law enjoy the right to establish and join trade unions. ***The Committee must once again reiterate the abovementioned request.***

*Article 3.* In its previous comments, the Committee had noted that section 40(b) provides that a trade union organization can organize a strike in coordination with a trade union organization of the highest level. The Committee had recalled that a legislative provision which requires that a decision by the first-level trade union to call a strike at the local level should be approved by a higher level trade union body, is not in conformity with the right of trade unions to organize their activities and to formulate their programmes. The Committee had requested the Government to clarify whether section 40(b) requires an authorization from the higher level trade union for a strike to be organized and, if that is the case, to take the necessary measures in order to amend the legislation so as to bring it into conformity with the Convention. ***The Committee must once again reiterate the abovementioned request.***

*The draft Labour Code.* The Committee recalls that in its previous comments it had noted that: (1) a draft Labour Code was under discussion and that several of its provisions were not in conformity with the Convention; (2) with the active participation of the ILO, it is working on the enactment of the new Labour Code; and (3) that the draft Code was referred to the Ministry of Legal Affairs, and will consequently be referred by the Ministry of Social Affairs and Labour to the Council of Ministers and afterwards to Parliament. The Committee notes that the Government indicates in its report that, due to the circumstances in Yemen since 2011, the House of Representatives has not held meetings for discussing and adopting new laws. ***The Committee hopes that the draft Labour Code will be adopted in the near future and that it will take into account its comments concerning the need to take the necessary measures to further amend or revise the following provisions:***

- *Article 2.* The need to: (1) ensure that domestic workers, the magistracy and the diplomatic corps, excluded from the draft Labour Code (section 3B(2) and (4)), may fully benefit from the rights set out in the Convention; and (2) consider revising section 173(2) of the draft Code so as to ensure that minors between the ages of 16 and 18 may join trade unions without parental authorization, and noted with interest the Government’s intention to do so.
- The need to indicate whether foreign persons holding diplomatic passports and those working in Yemen on the basis of political visas, who are excluded from the scope of the draft Code under section 3B(6) and covered by the specific legislation, regulations and agreements on reciprocal treatment, can in practice establish and join organizations of their own choosing.
- *Article 3.* The need to provide a list of essential services referred to in section 219(3) of the draft Code, which empowers the Minister to submit disputes to compulsory arbitration, which will be issued by the Council of Ministers once the Labour Code is promulgated.
- The need to further amend section 211 of the draft Labour Code, which provides that strike notice must include an indication as to the duration of a strike to ensure that a trade union can call a strike for an indeterminate period of time.
- *Articles 5 and 6.* The need to withdraw section 172 from the draft Labour Code since it appears to prohibit the right of workers’ organizations to affiliate with international workers’ organizations and contradicts section 66 of the Law on Trade Unions which ensures the right to affiliate with international organizations and the current practice.

***The Committee trusts that the present legislative reform will bring the national legislation into full conformity with the Convention, in accordance with the abovementioned comments, and requests the Government to indicate any development in this regard in its next report.***

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

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

The Committee notes with *concern* that the Government’s report has not been received. It is therefore bound to repeat its previous comments made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 2 and 3 of the Convention. Protection against anti-union practices.* While noting that the legislation provides for adequate protection against interference, the Committee recalls that for a number of years it has been requesting the Government to ensure that effective and sufficiently dissuasive sanctions that guarantee the protection of workers’ organizations against acts of interference by employers or their organizations in trade union activities are expressly provided for in the national legislation. The Committee had noted that draft legislative amendments to the Labour Code were under way and that the Government would endeavour to add provisions on penal responsibility of employers committing acts of interference in trade union affairs in order to

bring the legislation into conformity with the Convention. The Committee notes the Government's indication that the comments of the Committee would be taken into account when making amendments to the Act on Trade Unions and supplementing the Penal Code. ***The Committee once again requests the Government to indicate the progress made in this respect, and to provide copies of the amended legislative texts aimed at ensuring full respect for the rights enshrined in the Convention, as soon as they have been adopted.***

*Article 4. Refusal to register a collective agreement on the basis of consideration of "economic interests of the country".* The Committee had previously requested the Government to take the necessary measures to amend sections 32(6) and 34(2) of the Labour Code so as to ensure that refusal to register a collective agreement is only possible due to a procedural flaw or because it does not conform to the minimum standards laid down by the labour legislation, and not on the basis of consideration of "the economic interests of the country". The Committee had previously noted that the Government reiterated that it had adopted the Committee's proposal with regard to the amendment of the abovementioned section of the Labour Code. ***The Committee trusts that the legislative amendments requested in its previous observations will be fully reflected in the new legislation and once again requests the Government to provide a copy of the draft Labour Code as soon as the final version of it is available.***

*Collective bargaining in practice.* The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in its communication dated 31 July 2012, alleging notably that, in both the private and public sectors, many trade unions are not allowed to negotiate collective agreements. ***The Committee requests the Government to communicate its observations thereon.***

In its previous comments, the Committee had requested the Government to provide statistics on the number of workers covered by collective agreements in comparison with the total number of workers in the country and it had noted the Government's indication that the requested statistics on collective bargaining were available and would be sent in its subsequent reports. ***While noting that according to the Government trade unions exist in the public sector and that in the private sector trade unions have been established in certain institutions, the Committee expresses once again the firm hope that the Government will provide the statistics requested in its next report or at least the information available.***

***Finally, the Committee requests the Government to indicate the legal provisions which guarantee the right to collective bargaining of public servants not engaged in the administration of the State.***

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

## Zambia

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)**

The Committee notes the Government's reply in relation to the observations of the International Trade Union Confederation (ITUC) of 2012 concerning the dismissal of protesting miners and the decision of the High Court of 30 March 2011 (2006/HK/385) ruling in favour of the dismissed workers. The Committee notes the observations of the ITUC, received on 1 September 2017, concerning legislative matters and new allegations of anti-union dismissals in the mining industry as well as harassment of unionized university staff members. ***Recalling that acts of harassment and intimidation carried out against workers or their dismissal by reason of trade union membership or legitimate trade union activities seriously violate the principles of freedom of association enshrined in the Convention, the Committee requests the Government to provide its comments in this regard.***

*Articles 1–4 of the Convention. Adequate protection against acts of anti-union discrimination and promotion of free and voluntary collective bargaining.* In its previous comments, the Committee had noted the adoption of Industrial and Labour Relations (Amendment) Act No. 8 of 2008 (ILRA) but that most of its comments had not been taken into account when reviewing the law and that they would be considered under the next review. However, the Committee notes that the Government in its last report failed to offer further information in this respect. The Committee thus recalls its previous comments on the following provisions of the ILRA:

- Section 85(3) of the ILRA provides that the court shall dispose of the matter before it (including disputes between an employer and an employee, as well as the matters affecting trade unions and collective bargaining rights) within a period of one year from the day on which the complaint or application is presented to it. The Committee had recalled that when allegations of violations of trade union rights are concerned, both the administrative bodies and the competent judges should be empowered to give a ruling rapidly. ***While noting from the Government's report the attempts of the judiciary to reduce the backlog of cases within the one-year time frame, the Committee requests the Government to endeavour to take the necessary measures to shorten the maximum period within which a court should consider the matter and issue its ruling thereon.***
- Section 78(1)(a) and (c) and section 78(4) of the ILRA allow, in certain cases, either party to refer the dispute to a court or arbitration. In its previous comments the Committee had noted from the Government's report that the ILRA provisions relating to arbitration cater for the involvement of both parties. While taking note of the point of the Government that arbitration is by nature voluntary and consensual, the Committee wishes to reiterate that its comments refer specifically to the fact that both parties involved in the dispute need to accept the arbitration proceedings, for the latter to be voluntary. The Committee therefore cannot but recall that, in accordance with the principle of voluntary negotiation of collective agreements, arbitration imposed by legislation at the request of just one party is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term and acute national crises. ***The Committee once again requests the Government to give consideration to amending the above provisions so as to ensure that arbitration***

*in situations other than those mentioned above can take place only at the request of both parties involved in the dispute.*

*The Committee firmly hopes that the necessary amendments to bring the Act into full conformity with the provisions of the Convention will be adopted in the very near future. Recalling that it can avail itself of the technical assistance of the Office, the Committee requests the Government to provide information on any progress achieved in this respect.*

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 11** (Rwanda, Sri Lanka); **Convention No. 87** (Algeria, Botswana, Cabo Verde, Cambodia, Central African Republic, Comoros, Congo, Croatia, Democratic Republic of the Congo, Djibouti, Dominica, Ecuador, Eritrea, Gabon, Gambia, Georgia, Ghana, Grenada, Guyana, Haiti, Israel, Jamaica, Kiribati, Kuwait, Kyrgyzstan, Lesotho, Libya, Lithuania, Luxembourg, Republic of Maldives, Mali, Malta, Mauritius, Mexico, Republic of Moldova, Mongolia, Montenegro, Mozambique, Myanmar, Netherlands, Netherlands: Aruba, Netherlands: Caribbean Part of the Netherlands, Netherlands: Curaçao, Netherlands: Sint Maarten, Niger, Papua New Guinea, Rwanda, Saint Lucia, Sierra Leone, Timor-Leste, United Kingdom: Anguilla, Vanuatu); **Convention No. 98** (Angola, Barbados, Benin, Cabo Verde, Central African Republic, Chad, Comoros, Congo, Croatia, Democratic Republic of the Congo, Djibouti, Gabon, Georgia, Guinea, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Libya, Lithuania, Malawi, Republic of Maldives, Mauritania, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, New Zealand, Timor-Leste, Vanuatu); **Convention No. 135** (Democratic Republic of the Congo, Dominica); **Convention No. 141** (Belize); **Convention No. 151** (Bosnia and Herzegovina, Tunisia); **Convention No. 154** (Belize, Kyrgyzstan, Saint Lucia, Tunisia).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 87** (Iceland, Namibia); **Convention No. 98** (Latvia).

## Forced labour

### Angola

#### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)**

*Article 1(a) of the Convention. Imposition of penal sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee noted information from the United Nations High Commissioner for Human Rights regarding difficulties related to the content, interpretation and application in practice of laws on freedom of expression and freedom of assembly, defamation or slander. Noting that the new draft Penal Code still establishes prison sentences for the offences of slander and defamation, the Committee recalled that the Convention prohibits the imposition of forced labour, including compulsory prison labour, for the expression of political views or opposition to the established political, social or economic system. Consequently, prison sentences which involve compulsory labour, which is the case in Angola by virtue of sections 13 and 50(c) of the Regulations of the progressive regime of 9 July 1981, are contrary to *Article 1(a)* of the Convention when they are imposed to punish the expression of political opinions or opposition to the established system. The Committee therefore requested the Government to take account of these considerations in the process of revising the Penal Code and in the application of current legislation.

The Committee notes once again with *regret* that the Government has not provided any information on the progress made in the adoption of the new Penal Code nor on the application in practice of the legal provisions which punish defamation. The Committee notes that, within the framework of its human rights promotion mission in Angola in October 2016, the delegation of the African Commission on Human and Peoples' Rights expressed concern about the continuing existence of the crime of defamation in the Penal Code which limits the right to freedom of expression, and the impact of Presidential Decree No. 74/2015 on the registration of non-governmental organizations on the right to freedom of association (press release of 7 October 2016). The Committee also notes that the United Nations Committee on Economic, Social and Cultural Rights shares these concerns and highlights that human rights defenders and journalists operate under restrictive conditions and face police and judicial harassment, including arbitrary detention (E/C.12/AGO/CO/4-5 of 15 July 2016).

***The Committee urges the Government to take into account the above considerations to ensure that the provisions of the new Penal Code are in conformity with the Convention, particularly regarding the penalties applicable for the crime of defamation. In the meantime, the Committee requests the Government to take the necessary measures to ensure that, in accordance with the Convention, no person is compelled to perform labour, particularly compulsory prison labour, for having expressed certain political opinions or opposition to the established political, social or economic system both in relation to the exercise of the right to freedom of expression and the right to association. It requests the Government to provide information on any court decisions relating to the offences of slander and defamation, with an indication of the facts which led to the convictions and the penalties imposed.***

*Article 1(c). Imposition of compulsory labour as a means of labour discipline.* For many years, the Committee has been requesting the Government to amend certain provisions of the Merchant Shipping Penal and Disciplinary Code which are contrary to the Convention as they permit the imposition of prison sentences (including compulsory labour by virtue of sections 13 and 50(c) of the Regulation of the progressive regime of 9 July 1981) for certain breaches in labour discipline which do not endanger the safety of the vessel or the life or health of persons on board. Under the terms of section 132 of the Merchant Shipping Penal and Disciplinary Code, a member of the crew who deserts at the port of embarkation is liable to a prison sentence of up to a year; the sentence may be two years if desertion takes place in another port. By virtue of section 137, crew members who do not carry out an order from superiors, in relation to services that do not jeopardize the safety of the ship, are liable to a sentence of imprisonment from one to six months. Simple refusal to obey an order, followed by voluntarily carrying it out, is punishable by a maximum sentence of three months' imprisonment. The Committee notes in this respect that the Act on Merchant Shipping of 2012 (Act No. 27/12) does not affect these provisions of the Merchant Shipping Penal and Disciplinary Code as it does not regulate the conditions of work of seafarers (section 57), which are to be covered by specific legislation. ***The Committee therefore firmly hopes that the Government will take the necessary measures to ensure that the above provisions of the Merchant Shipping Penal and Disciplinary Code are repealed or amended so that breaches of labour discipline which do not endanger the safety of the vessel or the life or health of persons on board are not punished with prison sentences. Please provide copies of any new legislation adopted to this end.***

*Article 1(d). Imposition of prison sentences involving an obligation to work for having participated in strikes.* The Committee previously drew the Government's attention to the need to amend the provisions of section 27(1) of the Act on Strikes (Act No. 23/91 of 15 June 1991), under which the organizers of a strike that is prohibited or illegal or has been suspended by law are liable to prison sentences or fines. Therefore, pursuant to this section, compulsory labour (compulsory prison labour arising out of a conviction to a sentence of imprisonment) may be imposed on the organizer of a prohibited, illegal or suspended strike. The Committee emphasized in this regard that the legislation establishes a number of restrictions on the exercise of the right to strike, under the terms of which a strike, which should be lawful in

the light of the principles of freedom of association (see the Committee's comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)), could be declared illegal.

The Committee once again notes with *regret* that the Government has not provided any information on the progress made in the process of revising the Act on strikes, to which it has previously made reference. ***The Committee firmly hopes that the Government will take the necessary measures in the very near future to amend Act No. 23/91 on strikes to ensure that, in conformity with Article 1(d) of the Convention, persons who participate peacefully in a strike are not punished with a sentence of imprisonment during which they may be required to perform compulsory labour.***

## Austria

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1), 2(1) and 2(2)(c) of the Convention. Work of prisoners for private companies.* For a number of years, the Committee has been examining the situation of prisoners who are obliged to work, without their consent, in workshops run by private enterprises within state prisons, pursuant to section 46(3) of the Law on the execution of sentences. The Committee noted the indication of the Government that the prisoners working in private-run workshops are supervised only by prison staff and paid by the prison. The Committee repeatedly pointed out that the practice followed in this regard in Austria corresponds in all aspects to what is expressly prohibited by *Article 2(2)(c)*, namely, that a person is "hired to" private contractors. It noted, in particular, that the Convention addresses not only situations where prisoners are "employed" by the private company or placed in a position of servitude in relation to the private company, but also situations where prisoners are hired to private enterprises but remain under the authority and control of the prison administration.

The Committee also noted the Government's repeated indication that prisoners working for private contractors benefit from rights and conditions of work that are similar to those guaranteed in a free labour relationship. Additionally, the Government stated that only about 2.5 per cent of companies operating in Austrian prisons are privately run and that care is taken to ensure that prisoners are free and willing to carry out work in prison premises on a fully informed basis.

The Committee notes the Government's information in its report that, as of 1 January 2017, the remuneration for work by detained persons was increased by 46.9 per cent in the standard wage index compared with the level of 1 March 2000. The Government also indicates that it is stipulated that inmates working in privately run workplaces inside the prison must also provide freely given and informed consent. However, the Committee notes that section 46(3) of the Law on the execution of sentences was not amended during the reporting period. The Committee also notes that, according to a document named "Correctional services in Austria" issued by the Ministry of Justice in August 2016, convicts and prisoners in precautionary measures of forensic placement, who are fit to work, are obligated by law to take over work. Prisoners who are required to work have to do the work that has been allocated to them; however, they must not be employed for work which might endanger their life or subject them to serious health hazards. The amount of work remuneration is in keeping with the wage of workers in the metal-processing industry resulting from collective bargaining. However, 75 per cent of work remuneration is withheld as contribution to prison costs. On average, prisoners in Austrian prisons receive €5 per day, after deduction of their contribution to prison costs and of their contribution towards unemployment insurance.

The Committee once again points out that, in the absence of the voluntary consent of the concerned prisoners, the other factors mentioned by the Government cannot be regarded as indicators of a freely accepted employment relationship. The Committee once again draws the Government's attention to the fact that the work of prisoners for private companies is only compatible with the Convention where it does not involve compulsory labour. To this end, the formal, freely given and informed consent of the persons concerned is required, in addition to further guarantees and safeguards covering the essential elements of a labour relationship, such as wages, occupational safety and health and social security. ***Noting that section 46(3) of the Law on the execution of sentences remains in force, the Committee requests the Government to provide information on how the freely given and informed consent of prisoners to work in private enterprise workshops inside prison premises is ensured in practice. The Committee also requests the Government to take the necessary measures to ensure that section 46(3) of the Law on the execution of sentences is revised, in order to bring it into conformity with the indicated practice by the Government and the requirements of the Convention.***

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

## Azerbaijan

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)**

*Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee drew the attention of the Government to several provisions of the Criminal Code, enforceable with sanctions of correctional work or imprisonment, both involving compulsory labour in accordance with section 95 of the Code on the Execution of Sentences. These provisions are worded in terms broad enough to lend themselves to application

as a means of punishment for the expression of views opposed to the established political, social or economic system. These provisions include:

- section 147 regarding defamation, defined as “dissemination, in a public statement ... or through the mass media, of false information discrediting the honour and dignity of a person”;
- sections 169.1 and 233, read together with sections 7 and 8 of the Act on freedom of assembly, regarding “organization or participation in a prohibited public assembly” and “organization of group actions violating public order”; and
- section 283.1 regarding “inflaming the national, racial or religious enmity”.

The Committee referred to two judgments handed down by the European Court of Human Rights (ECHR) in 2008 and 2010, which found that convictions based on section 147 of the Criminal Code constituted a breach of Article 10 of the European Convention on Human Rights, which protects freedom of expression. Moreover, the Committee noted that the Government adopted amendments in 2013 to widen the scope of section 147 of the Criminal Code, which introduce criminal liability for defamation committed “through a publicly displayed Internet information resource”, despite the Government’s commitment to decriminalizing defamation. The first criminal conviction on charges of defamation online was handed down on 14 August 2013. Furthermore, the ECHR handed down a judgment on 22 May 2014 concerning a case of imprisonment on charges of “organizing public disorder” (section 233 of the Criminal Code), subsequently replaced by the more serious charge of “mass disorder” (section 220.1 of the Code), of which the purpose, according to the ECHR, was to silence or punish an opposition politician (*Ilgar Mammadov v. Azerbaijan*, application No. 151172/13).

The Committee also noted that, as highlighted and condemned by an important number of United Nations and European institutions and bodies, a growing tendency had emerged in recent years to apply various provisions of the Criminal Code as a basis for the prosecution of journalists, bloggers, human rights defenders and others who express critical opinions, under questionable charges which appear politically motivated, resulting in long periods of corrective labour or imprisonment, both involving compulsory labour. In this regard, the Committee observed that the following provisions of the Criminal Code are often used for this purpose: insult (section 148); embezzlement (section 179.3.2); illegal business (section 192); tax evasion (section 213); hooliganism (section 221); state treason (section 274); and abuse of office (section 308). Noting all this information with deep concern, the Committee strongly urged the Government to take all necessary measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views opposed to the established system.

The Committee notes the Government’s indication in its report, regarding section 147 of the Criminal Code that, based on the opinion of the ECHR, the Supreme Court has presented a proposal to the Parliament so that defamation shall only be punishable by fines and that other forms of punishment shall be removed from the Criminal Code. The Government also indicates that, under section 233 of the Criminal Code, four people were convicted in 2014, ten in 2015 and four in 2016.

The Committee also notes that, according to the Report of the UN Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan of 20 February 2017, in November 2016 the National Assembly approved amendments to the Criminal Code proposed by the Prosecutor General, which introduce section 148(1) (posting slander or insult on an Internet information resource by using fake user names, profiles or accounts), punishable by imprisonment for up to one year, and the extension of section 323(1) (smearing or humiliating the honour and dignity of the President in public statements, publicly shown products or the mass media) to online activities through the use of fake user names, profiles or accounts, punishable by up to three years’ imprisonment (A/HRC/34/52/Add.3, paragraph 46). The UN Human Rights Committee (HRC) also expresses its concern in its concluding observations of November 2016 that the maximum term of imprisonment under the Code of Administrative Offences for misdemeanours, with which human rights defenders are often charged (for example, hooliganism, resisting police and traffic violations), has been increased from 15 to 90 days. It is now equal to the minimum term of detention under the Criminal Code, which may amount to de facto criminal sanction (CCPR/C/AZE/CO/4, paragraph 20). Moreover, the findings of the UN Working Group on Arbitrary Detention during its mission to Azerbaijan in May 2016 indicate that human rights defenders, journalists, political opponents and religious leaders who criticize the Government and its policies face limitations on their work and personal freedom. At least 70 such individuals were reportedly detained on charges that included drugs- and arms-related offences, hooliganism and tax evasion. Lawyers who assisted in bringing cases of human rights defenders to the ECHR had been detained on charges of tax evasion, illegal entrepreneurship and abuse of authority (A/HRC/36/37/Add.1, paragraph 80).

The Committee further notes that the ECHR has continued to hear a number of cases from Azerbaijan concerning the detentions and convictions of individuals expressing opinions not in line with those of the ruling political establishment, particularly in the following cases: *Yagublu v. Azerbaijan*, application No. 31703/13, judgment of 5 November 2015; *Huseynli and others v. Azerbaijan*, application Nos 67360/11, 67964/11 and 69379/11, judgment of 11 February 2016; and *Rasul Jafarov v. Azerbaijan*, application No. 69981/14, judgment of 12 March 2016, among others. However, the rulings of the ECHR, including the one concerning Mr Ilgar Mammadov handed down in 2014, are not executed by the Government. Moreover, in his third-party intervention in the cases heard by the ECHR, the Council of Europe Commissioner for Human Rights concludes that there is a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. It concerns human rights defenders, journalists, bloggers and other

activists, who may face a variety of criminal charges which defy credibility. These criminal prosecutions also constitute reprisals against those who cooperate with international institutions (CommDH(2016)6, paragraph 46; CommDH(2016)42, paragraph 44).

Noting the absence of any improvement in the situation as described above, the Committee *deplores* the increasingly restrictive legislation, as well as the increased administrative charges and criminal prosecutions brought by authorities to suppress the peaceful expression of political or ideological views opposed to the established system, despite numerous calls for action by the United Nations and European institutions and bodies. The Committee once again draws the Government's attention to the fact that legal guarantees of the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, 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 (see General Survey on the fundamental Conventions, 2012, paragraph 302). ***The Committee therefore strongly urges the Government to take immediate and effective measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views opposed to the established system, in both law and practice. In this regard, the Committee requests the Government to ensure that the abovementioned sections of the Criminal Code are amended, by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. It also requests the Government to take the necessary measures to ensure that the application of the Criminal Code and the Code of Administrative Offences in practice does not lead to punishment involving compulsory labour in situations covered by Article 1(a) of the Convention. Lastly, the Committee requests the Government to provide information on any progress made in this respect.***

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

## Bahrain

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1981)**

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017.

*Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers to conditions of forced labour.* 1. *Migrant workers.* In its previous comments, the Committee referred to the concluding observations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) in which it expressed concern about the conditions of work of migrant domestic workers.

The Committee notes that the ITUC asserts in its observations that migrant workers constitute around 77 per cent of Bahrain's workforce working in different sectors of the economy, including domestic work, construction and service industries. According to the ITUC, the Government has repeatedly maintained that migrant workers in Bahrain are not subject to the sponsorship (*kafala* system) and may change their employment without needing the permission of their sponsor. However, the change of employment continues to depend on the approval of the Labour Market Regulatory Authority (LMRA), a government body under the authority of the Ministry of Labour. Ministerial Order No. 79 of 16 April 2009 continues to allow employers to include in the employment contract a requirement limiting the approval of a transfer to another employer for a specified period.

According to the ITUC, in May 2017, the Ministry of Interior introduced a pilot scheme for a flexible working permit (FLEXI) for limited categories of irregular migrant workers. Accordingly, irregular migrant workers who are currently working in Bahrain are permitted to work without a sponsor, provided they cover certain expenditures, such as an annual fee for a work permit (200 Bahraini dinar (BHD), US\$530), an annual health care fee (BHD144, \$381) and a monthly social insurance fee (BHD30, \$80). The ITUC adds that, workers who have a sponsor are not eligible for the FLEXI working permit. Skilled workers and "runaway criminals", a category that includes workers who have escaped abusive employers, are also not eligible for the scheme. Moreover, workers must provide a valid passport in order to apply for a permit. However, many migrants who are trapped in an irregular situation are not in possession of their passport due to the confiscation of their passport by their employer.

The Committee notes the Government's indication in its report that the FLEXI working permit has been initiated to allow any migrant worker working in abusive conditions to request a new working permit in order to work for a new employer. Under the FLEXI working permit, the labour contract will regulate the labour relationship between parties, and therefore migrant workers will benefit from the social protection scheme, including health care and legal protection. This system also aims to address the issue of irregular employment and protect migrant workers from exploitation and trafficking. The Committee observes that the FLEXI working permit, as initiated in 2017 (Regulation No. 108 of 2017), is a renewable two-year permit which allows the eligible person to live and work in the country without an employer (sponsor) where he or she can work in any job with any number of employers on a full or part-time basis. Migrant workers with either a terminated work permit, or an expired one are eligible for the FLEXI working permit provided they are in possession of a valid passport. Moreover, under such a permit migrant workers will be working on a contract basis and will have a renewable two-year residency and re-entry visa. In addition, the LMRA is in charge of monitoring this pilot initiative and provides quick services to both employers and migrant employees to better understand the new procedures

of recruitment. The Committee notes that, in order to apply for the FLEXI working permit, a migrant worker needs to pay an amount of BHD449 (\$1,190) to the LMRA. Such an amount includes a one-time fee for the FLEXI permit, the health-care fee, fee for the extension of the contract, as well as a one-time refundable deposit.

The Committee notes that as a pilot scheme, the FLEXI working permit is a first step that could facilitate the transfer of migrant workers' services to a new employer, thereby enabling them to freely terminate their employment. *In this regard, the Committee urges the Government to pursue its efforts to ensure that, in practice, migrant workers are not exposed to practices that might increase their vulnerability, in particular, in matters related to passport confiscation. The Committee requests the Government to provide further information on the application in practice of the FLEXI working permit, including information on the number of employment transfers that have recently occurred following the implementation of the FLEXI.*

2. *Migrant domestic workers.* The Committee further notes that with regard to the situation of domestic workers, the ITUC states that there are more than 105,200 domestic workers in Bahrain who are subject to exclusion from the coverage of a number of labour law provisions, including from weekly rest days or from a limit on working hours. There is no stipulation of a minimum wage, which allows employers to pay wages as low as BHD35 (\$92) per month, averaging BHD70 (\$186). Many work up to 19-hour days with minimal breaks, and no days off. Many have reported that they were prevented from leaving their employers' homes, and some said they received little food. Government and NGO officials report that physical abuse and sexual assault of female domestic workers are significant problems in Bahrain. There is also an absence of labour inspection into the working conditions of domestic workers. According to the ITUC, domestic workers are also explicitly excluded from the FLEXI scheme.

The ITUC further indicates that, in 2016, five investigations for forced labour and five involving domestic workers were reported. The public prosecutor received referrals from the LMRA of 13 recruitment offices allegedly involved in forced labour. However, there is no information available as to how each case has been dealt with and what sanctions have been imposed as a result.

The Committee notes the absence of information from the Government concerning this issue. The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant domestic workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment of wages, indecent conditions of work, deprivation of liberty and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. *The Committee requests the Government to take the necessary measures to ensure that migrant domestic workers are fully protected from abusive practices and conditions that could amount to forced labour. It also requests the Government to indicate the measures taken to guarantee the prohibition of passport confiscation, and to ensure that recruitment fees are not charged to workers, or that they are reimbursed subsequently by the employer if this is the case. Noting that migrant domestic workers are excluded from the national legislative framework, the Committee requests the Government to indicate the legislative and practical measures taken or envisaged to provide effective protection for this category of workers.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee noted that penalties of imprisonment (involving compulsory prison labour pursuant to section 55 of the Penal Code) may be imposed under the following provisions of national legislation in circumstances that are contrary to, or incompatible with, the Convention:

- Section 22 of Legislative Decree No. 47 of 2002 governing the press, printing and publishing: publishing or circulating publications which have not been authorized for circulation.
- Section 68 of the abovementioned Legislative Decree: harming or criticizing the official religion of the State, its foundations and principles; criticizing the King or blaming him for any act of the Government.
- Section 25 of Act No. 26 of 23 July 2005 on political associations: violating any provision of the Act for which no specific penalty is provided for.
- Section 13 of Act No. 32 of 2006, which amends Legislative Decree No. 18 of 5 September 1973 governing public assemblies, meetings and processions: organization of, or participation in, public meetings, processions, demonstrations and gatherings without notification, or in violation of an order issued against their convening; violating any other provision of the Act.
- Section 168 of the Penal Code: the dissemination of false reports and statements, as well as the production of publicity seeking to damage public security or cause damage to the public interest.
- Section 169 of the Penal Code: the publication of false reports or forged documents that could undermine the public peace or cause damage to the country's supreme interest.

The Committee expressed the firm hope that the Government would take the necessary measures, in the framework of the ongoing law review process, to ensure that no prison sentences involving compulsory labour are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system.

The Committee notes that the Penal Code was amended in 2015. However, the Committee notes with *regret* that despite the amendments, sections 168 and 169 remain virtually the same. The Committee notes the Government's indication that the abovementioned provisions aim to protect the public order as well as the sovereignty of the State. It adds that no court decisions had been handed down under these provisions. In this regard, the Committee notes that the scope of the provisions referred to above is not limited to violence or incitement to violence, but provides for political coercion and the punishment of the peaceful expression of non-violent views that are critical of government policy and the established political system, and for the punishment of various non-violent actions affecting the constitution or functioning of political associations, or organization of meetings and demonstrations, with penalties involving compulsory labour. The Committee recalls that legal guarantees of the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, constitute an important safeguard against the imposition of compulsory labour as a punishment for holding or expressing political or ideological views, or as a means of political coercion or education (see General Survey on the fundamental Conventions, 2012, paragraph 302). ***The Committee therefore urges the Government to take all necessary measures, in both law and practice, to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views, or views opposed to the established system, for example, by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect.***

*Article 1(c) and (d). Punishment for breaches of labour discipline and participation in strikes in the public services.* The Committee previously noted that section 293(1) of the Penal Code provides for penalties of imprisonment (which involve compulsory prison labour pursuant to section 55 of the Penal Code) in a situation “when three or more civil servants abandon their work, even in the form of resignation, if they do so by common accord with a view to achieving a common objective”. This provision is also applicable to persons who are not civil servants, but who perform work related to the public service (section 297). According to section 294(1), a punishment of imprisonment may be also inflicted upon a civil servant who relinquishes his office or refuses to discharge any of his official duties with the intent of obstructing the pursuit of business or causes any disruption to the pursuit thereof. The Committee noted the Government's indication that the Penal Code was under a process of amendment.

The Committee notes the Government's indication that sections 293(1) and 297 aim at achieving the continuity of certain services, such as the medical services, as well as avoiding the interruption of services that can cause inconvenience to the community. The Government also indicates that no court decisions have been handed down under the abovementioned provisions of the Penal Code. The Committee notes with *regret* that despite the 2015 amendments to the Penal Code, sections 293(1) and 297 remain virtually the same.

The Committee recalls that the imposition of sanctions involving compulsory labour as a punishment for breaches of labour discipline or for having peacefully participated in strikes is incompatible with the Convention. It also points out that, pursuant to *Article 1(c)* of the Convention, sanctions involving compulsory labour for breaches of labour discipline may only be applied if such breaches impair or are likely to endanger the operation of essential services, or in cases of wilful acts which would endanger the safety, health or life of individuals. The Committee observes in this connection that the abovementioned sections of the Penal Code are worded in terms broad enough to lead to the imposition of imprisonment, which involves an obligation to perform labour, in situations covered by *Article 1(c)* and *(d)* of the Convention. ***The Committee therefore requests the Government to take the necessary measures in order to bring sections 293(1), 294(1) and 297 of the Penal Code into conformity with the Convention, and to ensure that no sanctions involving compulsory labour may be imposed as a punishment for breaches of labour discipline or for peaceful participation in strikes. The Committee requests the Government to provide information on the progress made in this regard.***

## Bangladesh

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1972)***

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons.* The Committee previously noted the adoption of the Human Trafficking Deterrence and Suppression Act, 2012, section 6 of which prohibits trafficking in persons. The Act also provides for the establishment of a Human Trafficking Prevention Fund, as well as a National Anti-Trafficking Authority. Additionally, the Act contains provisions on the protection and rehabilitation of victims, including access to compensation and legal and psychological counselling. The Committee noted further the adoption of the National Plan of Action for Combating Human Trafficking (NPA) for the period of 2012–14, as well as various other measures taken to address trafficking in persons which are described in detail in the annual anti-trafficking country reports of the Ministry of Home Affairs.

The Committee notes the Government's information in its report that, in 2017, three implementing rules to the Human Trafficking Deterrence and Suppression Act, 2012, were adopted, namely the Prevention and Suppression of Human Trafficking Rule, the Human Trafficking Suppression Authority Rule and the Human Trafficking Fund Rule. The NPA 2015–17 has been adopted and is currently being implemented, with five strategic goals: prevention, protection, promoting legal justice, developing partnerships and effective monitoring. A counter trafficking committee is set up in each district. The Committee also notes that, according to the Government's written replies to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) of 21 March 2017, from 2012 to 2016 (November), a total of 2,966 cases of human trafficking have been registered, and 6,046 victims have been rescued. Of registered cases, trials in 192 cases have been completed and convictions were secured in 26 cases. The victims of trafficking also received prompt assistance. Upon their rescue, they are taken to shelter homes and are provided with medical treatment and psychosocial counselling. The Government runs a victim support centre, and a number of civil society organizations are working to provide legal assistance to the trafficking victims (CMW/C/BGD/Q/1/Add.1, paragraph 42). While taking due note of the increase in the number of trafficking investigations and prosecutions and the measures undertaken for the protection of victims, the Committee expresses its **concern** at the low number of convictions. ***The Committee therefore requests the Government to take the necessary measures to ensure that all persons who engage in trafficking and related offences are subject to thorough investigations and robust prosecutions. The Committee requests the Government to continue providing information on the number of convictions and the specific penalties applied, as well as on the difficulties encountered by the competent authorities in convicting perpetrators. It also requests the Government to continue providing information on the specific measures taken and concrete results achieved with regard to victims' protection, assistance and rehabilitation.***

2. *Forced labour practices.* The Committee previously noted that section 9 of the Human Trafficking Deterrence and Suppression Act, 2012, criminalizes the use of forced or bonded labour. Pursuant to this provision, the act of unlawfully forcing an individual to work against their will, or compelling them to provide labour or services, or holding a person in debt bondage by threat or use of force in order to perform any work or service is punishable with five to 12 years' imprisonment. The Committee requested the Government to provide information on its application in practice.

The Committee notes that, in its concluding observations of 2017, the CMW expresses its concern at undocumented nationals of Myanmar working in Bangladesh, including children, who are frequently subject to sexual and labour exploitation, including forced labour. Indian migrant workers are also subject to debt bondage in the brick kiln sector (CMW/C/BGD/CO/1, paragraph 31). In this regard, the Committee notes with *regret* the Government's information that no cases of forced or compulsory labour have been detected. ***The Committee therefore requests the Government to take the necessary measures to strengthen the capacity of law enforcement agencies to detect and investigate forced labour cases, and to provide information on any results achieved or progress made in this regard. The Committee also requests the Government to provide information in its next report, on the application in practice of section 9 of the Human Trafficking Deterrence and Suppression Act, 2012, including the number of investigations and prosecutions carried out, convictions handed down and the specific penalties applied.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1972)**

*Article 1(a) of the Convention. Sanctions involving the obligation to work as a punishment for the expression of political views or views ideologically opposed to the established political, social or economic system.* 1. *Penal Code.* The Committee previously requested the Government to provide information on the application in practice of section 124A of the Penal Code, which provides that whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law shall be punished with imprisonment for life or any shorter term, to which a fine may be added, or with imprisonment which may extend to three years, to which a fine may be added, or with a fine. According to section 53 of the Penal Code, rigorous imprisonment and imprisonment for life involve compulsory hard labour, while simple imprisonment does not involve an obligation to work.

The Committee notes the Government's indication in its report that the Penal Code does not interfere in employer–worker relations, and is applied to impose penalties on violence, incitement to violence or engagement in acts aimed at violence. Referring to paragraph 263 of the 2012 General Survey on the fundamental Conventions, the Committee reminds the Government that the purpose of the Convention is to ensure that no form of forced or compulsory labour is used in the circumstances specified in the Convention, which are closely interlinked with civil liberties, not limited to employer–worker relations. The Committee recalls that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of peaceful 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. In this connection, the Committee observes that, referring to incitement to contempt or disaffection towards the Government, section 124A of the Penal Code is worded in terms broad enough to lend itself to application as a means of punishment for the expression of views, and in so far as it is enforceable with sanctions involving compulsory labour, it falls within the scope of the Convention. ***The Committee therefore requests the Government to take the necessary measures to ensure that no***

*penalties involving compulsory labour may be imposed for the peaceful expression of political views, or views opposed to the established system, for example by clearly restricting the scope of section 124A of the Penal Code to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect, as well as information on the application of this section in practice, including any prosecutions conducted or court decisions handed down, indicating the penalties imposed.*

2. *Information and Communication Technology Act.* The Committee notes that, section 57 of the Information and Communication Technology Act of 2006 (ICT) criminalizes several forms of online expression, including defamation, expressions tarnishing the image of the state or an individual and statements hurting religious sentiments, among others. As amended in 2013, the offences under this section are punishable by imprisonment of seven–14 years. The Committee also notes that, in its concluding observations of 27 April 2017, the UN Human Rights Committee (HRC) expresses its concern at the arrest of at least 35 journalists, “secular bloggers” and human rights defenders in 2016 under the ICT Act of 2006 (amended in 2013), a de facto blasphemy law that limits freedom of opinion and expression using vague and overbroad terminology to criminalize publishing information online, that “hurts religious sentiment” and information that prejudices “the image of the State” with a punishment of seven to 14 years (CCPR/C/BGD/CO/1, paragraph 27). The Committee further notes that, pursuant to section 46(3) of the Prison Act of 1894, any inmate who violates prison rules may be punished by hard labour for a period not exceeding seven days, even if he/she has not been sentenced to rigorous imprisonment, which involves an obligation to work. *The Committee therefore requests the Government to take the necessary measures to ensure that no punishment involving compulsory labour is imposed in practice on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. It also requests the Government to provide information on any progress made in this regard.*

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

## Belarus

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1956)**

The Committee notes the observation of the Belarusian Congress of Democratic Trade Unions (BKDP), received on 31 August 2017.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)**

The Committee notes the detailed discussion which took place in the Conference Committee on the Application of Standards in May–June 2016, concerning the application by Belarus of the Convention. In its conclusions, the Conference Committee urged the Government to accept the technical assistance of the ILO and to constructively engage with the ILO at the highest levels to resolve the issues before its next sitting. The Committee also notes the report of the Technical Advisory Mission of the ILO to Belarus that took place from 19 to 23 June 2017.

*Articles 1(1), 2(1) and 2(2)(c) of the Convention.* *Compulsory labour imposed by the national legislation on certain categories of workers and persons.* The Committee previously noted with regret that several new provisions had been introduced into the national legislation, the application of which could lead to situations amounting to forced labour, and were thus incompatible with the obligation to suppress the use of forced or compulsory labour in all its forms, as required by the Convention. In particular, the Committee drew the Government’s attention to the new provisions of the national legislation.

1. *Compulsory labour imposed on workers in the wood processing industry.* The Committee noted the adoption of Presidential Decree No. 9 of 7 December 2012 on additional measures for the development of the wood industry, and more particularly section 1.2 which provides that an employee can only terminate his or her contract with the consent of the employer.

The Committee notes that, in its conclusions, the Conference Committee noted with interest the Government’s explanation of steps taken to repeal Decree No. 9 by Presidential Edict No. 182.

The Committee notes with *satisfaction* the Government’s information in its report that Decree No. 9 has been withdrawn by Edict No. 182 of 27 May 2016, a copy of which is attached to its report.

2. *Compulsory labour imposed on persons who have worked fewer than 183 days the previous year.* The Committee noted the adoption of Presidential Decree No. 3 of 2 April 2015 on the prevention of dependency on social aid, which provides that citizens of Belarus, foreign citizens and stateless persons permanently residing in Belarus who have not worked for at least 183 days in the last year, and thus have not paid labour taxes for the same period, are required to pay a special levy to finance government expenditure. Non-payment or partial payment of such a levy entails administrative liability in the form of a fine or administrative arrest with compulsory community service (sections 1, 4 and 14 of the Decree). The Committee noted that, in its observations on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), received on 31 August 2015, the BKDP expressed concern at the use of compulsory community service in that regard.

The Committee notes that, in its conclusions, the Conference Committee urged the Government to provide additional information on the operation in law and practice of Decree No. 3 and ensure that it is in full conformity with the Convention.

The Committee notes the observation of the BKDP that Presidential Decree No. 1 of 2017 amended Decree No. 3. However, the amendments, such as additional periods for participating in financing public expenditures, do not change the discriminatory nature of Decree No. 3. It further indicates that, Decree No. 3 was unofficially suspended by the Government following the call for its abolition from various stakeholders, but not repealed. Moreover, in the proposal of a new version, the Government again intends to implement the principle “if you do not work then you are to pay for services”.

The Committee takes due note of the Government’s indication in its report, and to the mission, that Decree No. 3 is suspended following the President’s instruction. While 62,700 people have paid the labour taxes in 2015, the tax authorities have stopped sending out notices for tax payments in 2017. Moreover, the provisions providing for administrative liability for not paying the tax have not been applied, and no penalties have been imposed on this ground in practice. The Government also indicates that a new conceptual framework is being developed to amend Decree No. 3, which shifts the focus from fiscal measures to the stimulation and promotion of employment and the reduction of illegal employment. A draft legislative text in this regard is expected to be completed by 1 October 2017.

The Committee notes from the mission report that the Government has provided assurances to the mission that public consultation, including with the social partners, would be conducted during the development of the amended version of Decree No. 3. ***The Committee therefore requests the Government to pursue its efforts to ensure that Decree No. 3 is amended in the near future, after consultation with all the relevant stakeholders, especially the social partners. It also requests the Government to provide information on any progress made in this regard.***

3. *Persons interned in “medical labour centres”.* The Committee noted the adoption of Law No. 104-3 of 4 January 2010 on the procedures and modalities for the transfer of citizens to medical labour centres and the conditions of their stay, which provides that citizens suffering from chronic alcoholism, drug addiction or substance abuse who have faced administrative charges for committing administrative violations under the influence of alcohol, narcotics and psychotropic, toxic or other intoxicating substances may be sent to medical labour centres as a result of a petition filed in a court of law by the head of internal affairs (sections 4–7 of the Law). Such persons are interned in medical labour centres for a period of 12 to 18 months and have an obligation to work.

The Committee notes that, in its conclusions, the Conference Committee urged the Government to provide additional information on the operation in law and practice of Law No. 104-3 and ensure that it is in full conformity with the Convention.

The Committee notes the Government’s information in its report, and to the mission, that not everyone who suffers from these problems can be sent to the centres, but only those who repeatedly (three or more times in one year) have disturbed public order and been found in a state of intoxication from alcohol, narcotics or other intoxicating substances. As a further condition, the individuals concerned must have received a warning after committing these offences that he or she might be sent to such a centre but has nevertheless committed administrative offences for similar violations within a year of that warning. The Government emphasizes that in view of the special situation of the individuals concerned, it is impossible in practice to implement a medical and social rehabilitation programme without such restrictive measures. According to the Ministry of Internal Affairs, 8,081 people were sent to medical labour centres since 2016, of which the number was 4,388 for the first half of 2017. Only 52 persons refused to work.

The Committee also notes the Government’s indication in its report and to the mission that persons who are sent to medical labour centres have to undergo a medical examination to determine their level of addiction, and then receive medical and social rehabilitation services, including medical and psychological treatment, personal development and self-education, as well as support for the re-establishment and maintenance of the family relationship. Moreover, employment is considered as one of the most important tools for achieving social reintegration. For this purpose, vocational guidance, training and retraining, as well as skills development are provided in the medical labour centres. The Government further states that the concerned persons are placed in employment in consideration of their ages, capacity for work, health status, skills and qualifications. They are also paid and granted annual and other types of leave in accordance with the labour law. In 2014 and 2015, 870 persons attended formal vocational technical education programmes, while in 2015, 387 persons received hands-on vocational training in the workplace. Moreover, as of June 2017, 5,647 persons were holding paid jobs in medical labour centres. The types of work carried out by such individuals include wood processing, agricultural work and public cleaning. ***The Committee therefore requests the Government to continue providing information on the implementation of Law No. 104-3 in practice, including the number of persons who are placed in the medical labour centres, specifying whether this placement is the consequence of a judicial conviction or administrative decision.***

4. *Parents whose children have been removed.* The Committee previously noted that Presidential Decree No. 18 of 24 November 2006 on supplementary measures for state protection of children from “dysfunctional families” authorizes the removal of children whose parents are leading “an immoral way of life”, or are chronic alcoholics or drug addicts, or in some other way unable to properly perform their obligations to raise and maintain children. Such parents who are unemployed or who are working but are unable to pay full compensation to the State for the maintenance of their

children in state childcare facilities are subject to a court ruling on employment, with an obligation to work (section 9.27 of the Code on Administrative Offences and section 18.8 of the Procedural Executive Code of Administrative Offences). Such a court ruling is a ground for dismissal of the person concerned from her or his previous place of work (section 44(5) of the Labour Code). Parents who avoid such work may be held criminally responsible, pursuant to section 174(2) and (3) of the Criminal Code, and shall be punishable by community service or corrective labour for a period of up to two years, imprisonment for up to three years, as well as restrictions or deprivation of freedom, all involving compulsory labour.

The Committee notes that, in its conclusions, the Conference Committee urged the Government to provide additional information on the operation in law and practice of Decree No. 18 and ensure that it is in full conformity with the Convention.

The Committee notes the Government's statement in its report and to the mission that the main objective of Decree No. 18 is to improve the situation in "dysfunctional families" so that children can return to live with their parents safely. In order to create circumstances enabling the concerned parents to renounce their antisocial, often immoral lifestyles, it is important for them to have a job. However, many of such parents are unemployed and have lost vocational skills for a long period; it is thus difficult for them to find work on their own as employers are not interested in hiring such persons. In this respect, Decree No. 18 establishes a mechanism whereby a court can order concerned parents to take up employment. Job placements were arranged at workplaces defined in coordination with the local authorities, such as employment and social protection agencies, which have a list of over 6,770 enterprises providing secure workplaces for such individuals. Moreover, one of the conditions in the selection of work is that the wage level is sufficiently high, in order to compensate for the expense of maintaining their children.

The Committee also notes the Government's information in its report that, in this regard, court orders were sent to 1,833 persons in 2014, 2,317 in 2015, 2,289 in 2016 and 1,128 in the first half of 2017. As of 31 March 2017, 8,371 persons had been placed in employment by the State employment authorities. Moreover, in 2016, 1,200 persons were prosecuted under section 174 of the Criminal Code, while the number was 496 for the first half of 2017. Additionally, from 2007 to 2016, a total of 33,832 children were recognized as needing State support, of which 21,021 children (more than 58 per cent) returned to their families and their parents. However, the Committee notes the information of the BKDP provided to the mission that, in one case, adopted children had been removed from a family for certain political views of the parents, even though the economic and social circumstances in the family were good. *While taking due note of the rehabilitation purpose of Decree No. 18 and the high rate of children returning to their parents, the Committee requests the Government to take the necessary measures to ensure that the implementation of the Decree in practice does not go beyond the purpose of rehabilitating dysfunctional families, in particular not for political purposes. The Committee also encourages the Government to consider revising provisions concerning the direct deduction of wages from persons in order to compensate the expenses of maintaining their children in State childcare facilities.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1995)**

*Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for the expression of political views or views opposed to the established political, social or economic system.* The Committee previously noted that violations of the provisions governing the procedures for the organization or holding of assemblies, meetings, street marches, demonstrations and picketing, established by Law No. 114-3 of 30 December 2007 on mass activities, are punishable by sanctions of imprisonment or the limitation of freedom, for the "organization of group actions violating public order" (section 342 of the Criminal Code) which involve compulsory labour under sections 50(1) and 98(1) of the Criminal Enforcement Code. The Committee also noted the adoption of section 369(2) of the Criminal Code, under which a person sentenced to administrative arrest for violations of the provisions governing the procedure for the organization or holding of assemblies, meetings, street marches, demonstrations and picketing, as defined by the Law on mass activities (pursuant to section 18(8) of the Code of Executive Procedure relating to Administrative Offences), who commits the same violation within one year can now be sentenced to imprisonment for up to two years, involving compulsory labour.

The Committee further noted that several other provisions of the Criminal Code, which are enforceable with sanctions involving compulsory labour, are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views opposed to the established political, social or economic system, including:

- section 193(1) of the Criminal Code, which provides that persons participating in the activities of unregistered groups may be sentenced to imprisonment, involving compulsory labour;
- section 339 of the Criminal Code, which criminalizes "hooliganism" and "malicious hooliganism" and provides for sanctions of limitation of freedom, deprivation of freedom or imprisonment, all involving compulsory labour; and
- sections 367 and 368 of the Criminal Code, which provide that persons "libelling the President" or "insulting the President" may be sentenced to limitation of freedom or imprisonment, both involving compulsory labour.

The Committee notes the Government's repeated indication in its report that section 15 of the Law on mass events defines responsibility for the infringement of the established procedure for organizing and/or holding mass events, but not for participation in such events. The Government indicates that, according to section 18(8) of the Code of Executive

Procedure relating to Administrative Offences, persons subject to administrative detention may be employed with their consent. The Committee also notes the Government's information that, from 2014 to the first six months of 2016, no cases were brought before or examined by the courts under sections 193(1), 342, 367 and 369(2) of the Criminal Code. The Committee further observes the Report of the UN Special Rapporteur on the situation of human rights in Belarus of 21 April 2017 (A/HRC/35/40, paragraph 6) and the Report of the Committee on Political Affairs and Democracy of the Council of Europe of 6 June 2017 (Document 14333, paragraph 30) that law enforcement agents seem to avoid physical attacks and detention during the intervention in public activities and that the authorities act instead by dispensing administrative and financial penalties since 2016, despite the suppression of peaceful social protests in early 2017.

While taking due note of the change in practice in this regard, the Committee must express its **concern** at the unchanged laws that criminalize unregistered or unauthorized public activities, which may lead to penalties involving compulsory labour as a punishment for peaceful expression of views or of opposition to the established political, social and economic system. **The Committee therefore urges the Government to amend or repeal the penal provisions referred to above (sections 193(1), 339, 342, 367, 368 and 369(2) of the Criminal Code), in order to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views ideologically opposed to the established system, for example by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect.**

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

## Belize

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)**

The Committee notes with **concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011.

*Article 1(c) and (d) of the Convention. Penalties involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes.* For many years, the Committee has been referring to section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving an obligation to perform labour, by virtue of section 66 of the Prison Rules) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may, by proclamation, be declared by the Governor to be a public service, if such person wilfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that section 2 of the Settlement of Disputes (Essential Services) Act, Statutory Instrument No. 92 of 1981, declared the national fire service, postal service, monetary and financial services (banks, treasury, monetary authority), airports (civil aviation and airport security services) and the port authority (pilots and security services) to be essential services, and Statutory Instrument No. 51 of 1988 declared the social security scheme administered by the Social Security Branch an essential service.

The Committee has recalled in this respect that the imposition of sanctions involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes is incompatible with the Convention. It has noted that section 35(2) of the Trade Unions Act refers not only to injury or danger but, alternatively, to grave inconvenience to the community, and applies not only to essential services, but also to other services, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

The Government indicates in its report that one of the main tasks of the newly revived Labour Advisory Board is the revision of the national legislation, and that the Board has regrouped the legislation under revision into six topics, including trade unions' rights. The Government also states that, although trade unions' legislation has not yet been covered, the intention is to revise it in order to bring it into conformity with the international labour Conventions, and that the Committee's concern regarding section 35(2) of the Trade Unions Act will definitely be taken into consideration. **While taking due note of this information, the Committee trusts that the process of the revision of the Trade Unions Act will be completed in the near future, so as to ensure that no sanctions involving compulsory labour could be imposed as a punishment for breaches of labour discipline or for peaceful participation in strikes.**

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

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

## Benin

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

*Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* The Committee recalls that its previous comments referred to a number of provisions under Act No. 60-12 of 30 June 1960 on the freedom of the press and Act No. 97-010 of 20 August 1997 liberalizing audiovisual communications and establishing special penal provisions for offences relating to the press and audiovisual communication, under which prison sentences involving the obligation to work in prison, could be imposed to punish various acts or activities related to the exercise of freedom of speech. The Committee observes in this respect that Act No. 2015-07 on the Code of Information and Communication in the Republic of Benin was adopted on 22 January 2015 and that this law repeals the two acts

abovementioned. The Committee notes with *satisfaction* that henceforth the offences of defamation, insult and contempt committed by the press, printed matter, posters or any other modern means of mass communication are no longer sanctioned with prison sentences (articles 268 to 278).

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

## Burkina Faso

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its previous comments, the Committee requested the Government to provide information on the application in practice of Act No. 029-2008/AN of 15 May 2008 on combating trafficking in persons and similar practices (Anti-Trafficking Act), and to indicate whether the national action plan to combat trafficking and sexual violence against children had been adopted and whether its measures were also intended to prevent trafficking in adults.

The Committee notes the Government's indication in its report that it has not been possible to draw up the national action plan, but that the subjects concerned are covered by other programmes, such as the national programme to combat trafficking in children in small-scale mines and quarries. The Government also indicates that, according to the 2015 national report on trafficking in children, 1,099 children were victims of trafficking and that the partial figures from the 2016 draft report refer to 1,416 child victims. Moreover, 42 persons have been identified as suspects under the terms of the Anti-Trafficking Act of 2008. Out of these 42 suspects, ten have been found guilty and sentenced by the courts.

The Committee notes that most of the information provided by the Government refers to the measures taken to combat trafficking in children and that no information is provided on the trafficking of adults. In this regard, the Committee notes that, in its concluding observations of 17 October 2016, the United Nations Human Rights Committee stated that it remained concerned about human trafficking for the purposes of sexual exploitation or forced labour (CCPR/C/BFA/CO/1, paragraph 35). ***The Committee urges the Government to take the necessary measures to combat trafficking in persons (adults), in particular through the adoption of an appropriate national action plan that would enable the application in practice of the Anti-Trafficking Act (No. 029-2008/AN of 15 May 2008). It also requests the Government to take the necessary steps to strengthen the capacities of law enforcement bodies, including the labour inspectorate, to combat trafficking in persons. The Committee further requests the Government to provide information on the measures taken or envisaged to protect victims of trafficking and to provide them with appropriate assistance. Lastly, the Committee requests the Government to continue providing information on the number of prosecutions initiated, convictions handed down and specific penalties applied under the Anti-Trafficking Act.***

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

## Burundi

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1963)**

*Articles 1(1) and 2(1) of the Convention.* 1. *Compulsory community development work.* For a number of years, the Committee has noted that Act No. 1/016 of 20 April 2005, organizing municipal administration, has the objective of promoting the economic and social development of municipalities at both the individual level and on a collective and unified basis. The municipal council is responsible for determining the community development programme, monitoring its implementation and ensuring its evaluation. The Act also provides for regulations to be issued determining the organization, mechanisms and procedures for inter-municipal action. The Committee also noted the observations made by the Trade Union Confederation of Burundi (COSYBU) on several occasions (2008, 2012, 2013 and 2014) to the effect that community work is decided upon unilaterally without the population being consulted and that the police are mobilized to close the streets and accordingly prevent the population from moving during such work.

The Committee once again notes the observations made by the COSYBU, received in 2015, according to which the voluntary nature of participation in community work should be explicitly set out in law. The Committee notes with *deep concern* the absence of information in the Government's report on this issue, which the Committee has been raising for a number of years. ***The Committee urges the Government to take the necessary measures for the adoption of the text to implement Act No. 1/016 of 20 April 2005, organizing municipal administration, particularly with regard to participation in and the organization of community work, and to use this opportunity to ensure explicitly the voluntary nature of participation in such work. In this connection, the Committee requests the Government to indicate the procedures through which such work can be exacted from the population, and particularly the duration of the work carried out and the number of persons concerned.***

2. *Compulsory agricultural work.* For many years, the Committee has been requesting the Government to take the necessary measures to bring several legal texts providing for compulsory participation in certain types of agricultural work into conformity with the Convention. It has emphasized the need to set out in law the voluntary nature of agricultural work resulting from obligations relating to the conservation and utilization of the land and the obligation to create and maintain minimum areas for cultivation (Ordinances Nos 710/275 and 710/276 of 25 October 1979), and to formally

repeal certain texts on compulsory cultivation, portering and public works (the Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953 and the Decree of 10 May 1957). The Committee also noted the Government's indication that these texts, which date from the colonial period, have been repealed and that the voluntary nature of agricultural work has been confirmed.

The Committee notes the absence of information on this subject in the Government's report. ***The Committee hopes that the Government will be in a position to provide copies of the texts repealing the legislative texts referred to above and which establish the voluntary nature of this agricultural work.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)**

*Article 1(a) of the Convention. Imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee noted the observations of the Trade Union Confederation of Burundi (COSYBU), which referred to judicial proceedings instigated against journalists in private radio stations, restrictions on free and independent demonstrations and the arrest of a human rights activist. The Committee also noted the possibility referred to by the Government of revising Ministerial Order No. 100/325 of 15 November 1963 concerning the organization of prisons, section 40 of which provides for the obligation to work for convicted prisoners, in order to exclude political prisoners from its scope.

The Committee notes the Government's indication that Order No. 100/325 of 15 November 1963 organizing prisons has been repealed and replaced by Act No. 1/026 of 22 September 2003 issuing the rules governing prisons. According to the Government, compulsory and forced prison labour has been abolished in all prisons and detention centres. The Committee however notes with *regret* that, under the terms of section 25 of Act No. 1/026 of 22 September 2003 issuing rules governing prisons, work is compulsory for prisoners. The Committee therefore refers once again to sections 412, 413 and 426 of Legislative Decree No. 1/6 of 4 April 1981 amending the Penal Code, which establishes penalties for certain offences against the security of the State, under the terms of which persons may be convicted to sentences of penal servitude involving, under section 40 of Ministerial Order No. 100/325, the obligation to work. In this regard, the Committee recalls that *Article 1(a)* of the Convention prohibits the use of labour, including compulsory prison labour, as a punishment for persons who, without having recourse to violence, have expressed political views or views ideologically opposed to the established political, social or economic system. It emphasizes that the range of activities which must be protected under this provision from punishment involving compulsory labour includes the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media) (see General Survey of 2012 on the fundamental Conventions, paragraph 302). ***The Committee therefore urges the Government to take the necessary measures to bring the legislation into conformity with the Convention and to amend Act No. 1/026 of 22 September 2003 issuing rules governing prisons so as to guarantee, in law and practice, that no penalty involving compulsory labour is imposed as a punishment for the expression of political views or ideological opposition. The Committee requests the Government to provide information on any progress achieved in this regard.***

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

## **Cambodia**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1969)**

*Articles 1(1), 2(1) and 25 of the Convention. 1. Trafficking in persons.* The Committee previously noted the Government's indication that, within the framework of the National Action Plan of 2011–13 on the suppression of trafficking and sexual exploitation, it had monitored places where prostitution may occur; provided advice and rehabilitation to sex workers; and instructed over 700 business owners on issues related to sexual exploitation. It had also taken measures to inform recruitment agencies on the risks associated with the use of false documentation, as well as on the importance of providing pre-departure training for migrants. The Committee further noted the statistical information provided by the Government on the number of cases of trafficking in persons and sexual exploitation brought before the courts, as well as the number of victims identified and individuals accused. The Committee noted, in particular, that the number of victims of trafficking and sexual exploitation identified appeared to have decreased substantially during the period of implementation of the National Action Plan. However, no information was provided on the number of convictions, the penalties imposed on perpetrators or the specific action taken to protect and assist victims.

The Committee notes the Government's information in its report that, in 2014, the police arrested 127 suspects, while the courts examined 74 cases and convicted 31 persons with a punishment of imprisonment; in 2015, the police arrested 144 suspects, while the courts examined 250 cases and convicted 201 persons with a punishment of imprisonment; and in 2016, the police arrested 113 suspects, while the courts examined 138 cases and convicted 103 persons with a punishment of imprisonment. The Government also indicates that, in 2016, the National Committee for Counter Trafficking (NCCT), in collaboration with its partners, provided 1,362 victims and vulnerable persons with assistance, including health checks, consultations, food and accommodation, training, etc. The Committee also notes that the National Action Plan for 2014–18 (NAP 2014–18) was adopted. Within the framework of its implementation, the

Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service were endorsed in 2015. The Committee further notes from a report of the United Nations Office on Drugs and Crime (UNODC) *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* of August 2017 that trafficking in persons from Cambodia to Thailand for sexual exploitation has declined in recent years. However, Cambodia has become a destination country for sex trafficking from Viet Nam and experiences high levels of internal trafficking. ***The Committee therefore requests the Government to continue to take the necessary measures to ensure that thorough investigations and prosecutions are carried out against perpetrators of trafficking in persons, and to continue providing information on the number of judicial proceedings initiated, as well as on the number of convictions and the specific penalties applied. The Committee also requests the Government to continue providing information on the measures taken to protect victims of trafficking and to facilitate their access to assistance and remedies.***

2. *Vulnerability of migrant workers to conditions of forced labour.* The Committee previously noted the Report of the International Trade Union Confederation (ITUC) for the World Trade Organization (WTO) General Council Review of the Trade Policies of Cambodia that migrant workers from Cambodia are vulnerable to situations of forced labour, particularly women domestic workers in Malaysia and men on fishing boats in Thailand. In this regard, the Committee also noted the adoption of Sub-Decree No. 190 of 2011 on “the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies”, as well as of eight *Prakas* (Proclamations) supplementing the 2011 Sub-Decree. With regard to international cooperation measures, the Government stated that the draft Memorandum of Understanding (MoU) with the Government of Malaysia was under discussion. The Government further indicated that additional employees had been appointed to manage labour migration issues in the Embassies of Cambodia in Malaysia and Thailand.

The Committee notes the Government’s information that in 2016, 40 inspections were carried out on private recruitment agencies, 54 cases have been received and settled involving 187 workers (129 females), and 46 training sessions of pre-departure orientation were held, in which 1,740 workers have participated. The Committee also notes that, according to the midterm evaluation report of the NAP 2014–18, an MoU with China was completed in late 2016. Efforts continue at finalizing an MoU with Malaysia and the MoU with Thailand is still being reviewed. According to the Report of the Tripartite Committee of the Governing Body set up to examine the representation alleging non-observance by Thailand of the Convention of 20 March 1977, there are 701,540 Cambodian migrant workers and a significant number of undocumented migrants who work in the fishing sector (GB.329/INS/20/6, paragraph 43). They are often deceived into this sector by brokers, and not able to leave given the fear of arrest and deportation, as well as the need to pay off debts (paragraph 15). The Committee further notes the Migration and Development Brief No. 28 of October 2017 by the World Bank that, the Government has announced plans to send 360 officials to Thailand between mid-September and December of 2017 for a 100-day campaign to assist a targeted 160,000 undocumented Cambodians in Thailand to obtain proper papers. ***While taking note of the measures undertaken by the Government, the Committee requests it to continue its efforts to ensure that all migrant workers are fully protected from abusive practices and conditions that amount to forced labour, and to continue providing information in this regard. The Committee also requests the Government to continue providing information on the application in practice of Sub-Decree No. 190 of 2011 on labour migration and private recruitment agencies, as well as its supplementing Prakas, indicating the concrete results achieved.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)**

*Article 1(a) of the Convention.* *Sanctions involving the obligation to work as a punishment for the expression of political views or views ideologically opposed to the established political, social or economic system.* The Committee previously noted that, according to section 41 of the Law on Political Parties of 1997, various offences related to the administration or management of a political party which has been dissolved, or whose activities have been suspended by a court, or whose registration has been refused, are punishable with sanctions of imprisonment for a term of up to one year, which involves compulsory labour pursuant to section 68 of the Law on Prisons of 2011. The Committee also noted that, pursuant to the Penal Code of 2009, the offences of public defamation and insult (sections 305–309) are punishable with fines only. The Committee further noted the adoption of the Law on Peaceful Demonstrations of 2009 and the arrest of seven opposition members of Parliament in July 2014 during protests against the ban on demonstrations imposed by the Government in January 2014 after the number of protests in the country escalated in late 2013.

The Committee notes the Government’s information in its report that no political party has been dissolved by a court decision under the Law on Political Parties of 2007. The Government also indicates that a demonstration may not be carried out in the event that it endangers or may adversely affect the public order, safety and security. Moreover, perpetrators of the criminal offence of riots or leading of riots were arrested in accordance with the Penal Code.

The Committee also notes that the Law on Political Parties of 2007 was amended in 2017, pursuant to which section 42 of the amended version retains the provisions of section 41 of the previous version. Moreover, several sections under the Penal Code of 2009 providing for a penalty of imprisonment may still be used in situations covered by *Article 1(a)* of the Convention, including sections 494 and 495 on incitement to disturb public security by speech, writing, picture or any audio-visual communication in public or to the public; section 522 on publication of commentaries intended to unlawfully coerce judicial authorities; and section 523 on discrediting judicial decisions. The Committee further notes the adoption of

the Law on Associations and Non-Governmental Organizations in 2015 and the adoption of the Law on Trade Unions in 2016. Additionally, the legislation on cybercrime is currently being drafted.

The Committee notes that, according to the Report of the UN Special Rapporteur on the situation of human rights in Cambodia of 5 September 2016, in the case of many laws, the degree of their compliance with international human rights laws lies in the interpretation and application of the law by law enforcement and judicial officials (A/HRC/33/62, paragraph 29). In her report of 27 July 2017, the Special Rapporteur expressed her concern at the raft of laws (on associations and NGOs, on the election of members of the National Assembly, on trade unions and on peaceful demonstrations) that can be used to restrict freedom of assembly and association and freedom of expression (A/HRC/36/61, paragraph 47).

The Committee also notes that, the report of the Special Rapporteur of 2017 indicates that several senior member of the Cambodia National Rescue Party (CNRP), the largest opposition party, have been the subject of convictions and sentences (paragraph 6). Senator Hong Sok Hour was sentenced to seven years' imprisonment on 9 November 2016 for forgery and incitement in connection with a Facebook post. Senator Thak Lany, who is currently in exile, was convicted in absentia to 18 months' imprisonment on charges of defamation and incitement in connection with a video clip on Facebook purportedly of a speech with comments on the death of a political activist, Kem Ley (paragraph 7). Moreover, the High Commissioner for Human Rights of the United Nations expressed his serious concern in a statement of 4 September 2017 at the arrest of Kem Sokha, the current president of CNRP. Kem Sokha is accused of treason and faces a prison term of between 15 and 30 years if convicted, based on a video of a speech he made in 2013, which has been publicly available since then.

The Committee further notes that, according to the report of the Special Rapporteur of 2017, many NGO representatives, trade union members and human rights defenders are still subjected to threats, harassment, arrest, pre-trial detention and prosecution (paragraph 45). Notably, in 2016, five members of the Cambodian Human Rights and Development Association (CHRDA) were arrested and kept in pre-trial detention for over a year. They were released under judicial supervision in June 2017, while the trial dates are still pending (paragraphs 21 and 22). Moreover, a number of protesters related to the "black Monday" campaign against the arrest of these staff of the CHRDA were arrested and prosecuted for defamation, public insult and various public order offences under the Penal Code. Among others, Tep Vanny was prosecuted following her participation in a black Monday event on 15 August 2016. She was then charged with "intentional violence with aggravating circumstances" relating to another protest in 2013, and sentenced to two and a half years' imprisonment on 23 February 2017 (paragraph 45). Moreover, an independent political analyst, Kim Sok, has been in pre-trial detention since 17 February 2017 on defamation and incitement charges for publically expressing his opinion that the ruling party was responsible for the killing of Kem Ley (paragraph 48).

The Committee notes that although the offences of public defamation and insult are punishable with fines only under the Penal Code of 2009, those provisions have been applied to the various persons mentioned above to punish them with penalties of imprisonment. The Committee is bound to express its *deep concern* over the detentions of, and prosecutions against members of the opposition party, NGO representatives, trade union members and human rights defenders and recalls that restriction on fundamental rights and liberties, including freedom of expression, may have a bearing on the application of the Convention if such restrictions are enforced by sanctions involving compulsory labour. The Committee draws the Government's attention to the fact that legal guarantees of the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, constitute an important safeguard against the imposition of compulsory labour as a punishment for holding or expressing political or ideological views, or as a means of political coercion or education (see General Survey on the fundamental Conventions, 2012, paragraph 302). *The Committee therefore urges the Government to take immediate measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views opposed to the established system, both in law and in practice. In this regard, the Committee requests the Government to ensure that section 42 of the Law on Political Parties as amended in 2017, as well as sections 494, 495, 522 and 523 of the Penal Code of 2009 are amended, by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. It also requests the Government to take the necessary measures to ensure that the application of the Penal Code, the Law on Trade Unions, the Law on Associations and Non-governmental Organizations and the Law on Peaceful Demonstration in practice does not lead to punishment involving compulsory labour in situations covered by Article 1(a) of the Convention. Lastly, the Committee requests the Government to provide a copy of the legislation on cybercrimes, once adopted.*

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

*[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]*

## Cameroon

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(a) of the Convention.* Imposition of sentences of imprisonment involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system. Since 1996, the Committee has been drawing the Government's attention to certain provisions of the legislation (Penal Code and Act No. 90-53 concerning freedom of association) by virtue of which criminal penalties that include compulsory prison labour may be imposed. Specifically, under section 24 of the Penal Code and section 49 of Decree No. 92-052 establishing the prison system, prison sentences entail the obligation to work. The Committee emphasized that where an individual is, in any manner whatsoever, compelled to perform prison labour as punishment for expressing certain political views or opposing the established political, social or economic system, this is not in conformity with the Convention. The Committee referred to the following legal provisions:

- section 113 of the Penal Code, under which any person issuing or propagating false information that may be detrimental to the public authorities or national unity shall be liable to imprisonment of three months to three years;
- section 154(2) of the Penal Code, under which any person guilty of incitement, whether in speech or in writings intended for the public, to revolt against the Government and the institutions of the Republic shall be liable to imprisonment of three months to three years;
- section 157(1)(a) of the Penal Code, under which any person guilty of incitement to obstruct the enforcement of any law, regulation or lawfully issued order of the public authority shall be liable to imprisonment of three months to four years;
- section 33(1) and (3) of Act No. 90-53 concerning freedom of association, under which board members or founders of an association which continues operations or which is re-established unlawfully after a judgment or decision has been issued for its dissolution, and persons who have encouraged the assembly of members of the dissolved association by allowing continued use of the association's premises, shall be liable to imprisonment of three months to one year. Section 4 of the Act provides that associations founded in support of a cause or for a purpose contrary to the Constitution, or associations whose purpose is to undermine, inter alia, security, territorial integrity, national unity, national integration or the republican nature of the State, shall be null and void. Furthermore, section 14 provides that the dissolution of an association does not prevent any legal proceedings from being instituted against the officials of such an association.

The Committee notes that there is no information on this point in the Government's report. The Committee notes the adoption of Act No. 2016-007 of 12 July 2016 issuing the Penal Code. However, it observes with **concern** that sections 113, 154(2) and 157(1)(a) of the Penal Code remain unchanged and that any person who propagates false information, who is guilty of incitement whether in speech or in writings intended for the public, to revolt against the Government and the institutions of the Republic, or who is guilty of incitement to obstruct the enforcement of any law, regulation or lawfully issued order of the public authority, is still liable to imprisonment that includes compulsory prison labour. Moreover, the Committee notes that, under section 153, any person who insults the President or a foreign head of State shall be liable to imprisonment of six months to five years.

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour, especially compulsory prison labour, as a punishment for persons who, without recourse to violence, hold or express political views or views ideologically opposed to the established political, social or economic system. The Committee emphasizes that the range of activities which must be protected, under this provision, from punishment involving forced or compulsory labour thus includes the freedom to express political or ideological views (which may be exercised orally or through the press or other communications media) (see General Survey of 2012 on the fundamental Conventions, paragraph 302). **The Committee therefore urges the Government to take the necessary steps without delay to bring the abovementioned provisions of the Penal Code and those of Act No. 90-53 concerning freedom of association into conformity with the Convention, in such a way that no penalty of imprisonment entailing compulsory labour can be imposed on persons who express political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to send information on all progress made in this respect.**

## Central African Republic

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1) and 2(1) of the Convention.* Violations committed in the context of hostilities between armed groups. In its previous comments, while bearing in mind the complexity of the situation in the country and the efforts made by the transitional Government to restore peace and security, the Committee asked the Government to take the necessary steps to end the violence committed against civilians, particularly women and children, with the aim of subjecting them to forced labour, including sexual slavery.

The Committee notes the Government's indication in its report that, after a period of transition, the constitutional order of the country has been restored and the established institutions are now operational. A number of steps have been taken to end the violence committed against civilians, particularly women and children, in particular: (i) the National Plan to restore and consolidate peace (2017–21); (ii) the process to update the political dialogue on social protection conducted in June 2017 by the Ministry of Social Affairs in partnership with the World Bank, UNICEF and the ILO; and (iii) the disarmament, demobilization, reintegration and repatriation (DDRR) programme.

The Committee notes that these initiatives are aimed at restoring peace and security in the country. The Committee also notes that the Independent Expert on the situation of human rights in the Central African Republic, in her 2017 report to the United Nations Human Rights Council, observed that the Lord's Resistance Army (LRA) continues to commit serious abuses against the civilian population in the areas under its control in the east of the Central African Republic, to attack villages, to loot property and to abduct civilians almost routinely, subjecting them to forced labour, forced recruitment, sexual slavery and sexual violence. Between July 2016 and June 2017, the Human Rights Division of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) documented more than 100 incidents, which left over 360 victims (A/HRC/36/64, paragraph 53). The Independent Expert emphasized that the resurgence of widespread violence has gone hand in hand with a significant increase in acts of sexual violence committed by armed groups (paragraph 63). She also observed that a truth and reconciliation commission and a special criminal court are being established and that these two institutions might help victims to assert their rights (paragraphs 80 and 81). In this regard, the Independent Expert recalled the importance of ensuring the safety and protection of victims and witnesses, in order to encourage them to testify about the serious violations they suffered or witnessed (paragraph 92).

In the light of the above, the Committee is bound to express its *deep concern* at the persistent recourse to forced labour and sexual slavery by armed groups, as well as the large number of victims of such practices. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of a conflict and armed groups in the country, the Committee urges the Government to take, as a matter of urgency, the necessary measures to end the violence committed against civilians with the aim of subjecting them to forced labour, including sexual slavery. It also requests the Government to take the necessary steps to combat impunity and to ensure that the perpetrators of these serious violations of the Convention are brought to justice and punished, and that the victims are compensated for the harm suffered. Lastly, the Committee requests the Government to provide information on the results achieved in this regard.***

*Article 25. Application of adequate criminal penalties.* The Committee previously noted that the national legislation did not contain provisions that would enable full effect to be given to *Article 25* of the Convention, which establishes that the exaction of any form of forced labour shall be punishable with criminal penalties that are really adequate. While the Labour Code prohibits recourse to forced labour in all its forms, it does not establish the applicable penalties, and the criminal penalties established by section 151 of the Penal Code apply only to the offence of trafficking in persons.

The Committee notes that the Government's report does not contain any information on this matter. ***In view of the fact that the definition of forced labour provided in the Convention is very broad and covers various practices that are not limited to trafficking in persons, the Committee requests the Government to take the necessary steps to ensure that the legislation contains provisions that enable law enforcement bodies and the authorities to prosecute, judge and punish the perpetrators of all forms of forced labour.***

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

## Chad

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

*Article 2(2)(a) of the Convention. Work of general interest imposed in the context of compulsory military service.* For many years, the Committee has been requesting the Government to take measures to amend the legislation on compulsory military service to ensure its conformity with *Article 2(2)(a)* of the Convention. The Committee noted previously that, according to section 14 of Ordinance No. 001/PCE/CEDNACVG/91 reorganizing the armed forces within the framework of compulsory military service, 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 upon to perform work of general interest by order of the Government. However, to be excluded from the scope of the Convention and not considered to be forced labour, any work or service exacted in virtue of compulsory military service laws must be of a purely military character. In its report, the Government indicates that it will take the necessary measures to bring the provisions of section 14 of Ordinance No. 001/PCE/CEDNACVG/91 into conformity with the Convention. ***The Committee takes due note of this information and hopes that the provisions of section 14 of the Ordinance reorganizing the armed forces of 1991 will be amended in the very near future so as to ensure that work exacted within the framework of compulsory military service is of a purely military character.***

*Article 2(2)(c). Work imposed by an administrative authority.* For many years, the Committee has been drawing the Government's attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government

to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which persons convicted of penal offences involving prohibition of residence may be used for work in the public interest for a period, the duration of which is to be determined by order of the Prime Minister. This provision allows the administrative authorities to impose work on persons subject to a prohibition of residence once they have completed their sentence. The Committee notes the Government's indication that it will take the necessary measures to amend or repeal section 2 of Act No. 14 of 1959 referred to above. ***Taking into account the fact that this matter has been the subject of comments by the Committee for many years and that the Government has already referred in the past to a draft text to repeal this provision, the Committee trusts that the Government will indicate in its next report the progress achieved in this respect.***

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

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

## China

### Hong Kong Special Administrative Region

#### ***Abolition of Forced Labour Convention, 1957 (No. 105) (notification: 1997)***

*Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as a punishment for expressing certain political views or views ideologically opposed to the established political, social or economic system.* The Committee previously noted the following legislative provisions, under which penalties of imprisonment (involving compulsory prison labour, pursuant to section 38 of the Prison Rules) may be imposed:

- printing, publishing, selling, distributing, importing, etc., of seditious publications or uttering seditious words (section 10 of the Crimes Ordinance, Cap. 200);
- various violations of the prohibition on printing and publication (sections 18(i) and 20 of the Registration of Local Newspapers Ordinance, Cap. 268; regulations 9 and 15 of the News Agencies Registration Regulations, Cap. 268A; regulations 8 and 19 of the Newspaper Registration and Distribution Regulations, Cap. 268B; regulations 7 and 13 of the Printed Documents (Control) Regulations, Cap. 268C);
- various contraventions of regulations of public meetings, processions and gatherings (section 17A of the Public Order Ordinance, Cap. 245).

The Committee noted that, in its concluding observations regarding the report of Hong Kong, China, the UN Human Rights Committee expressed concern about the application in practice of certain terms contained in the Public Order Ordinance, such as “disorder in public places” (as provided for by section 17B) and “unlawful assembly” (as provided for by section 18), which may facilitate excessive restriction on civil and political rights. It also expressed concern about the increasing number of arrests of, and prosecutions against, demonstrators.

The Committee notes the Government's repeated statement in its report that freedom of the press, as well as freedom of opinion and expression are protected under the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383). The Government once again indicates that no cases relating to the application of the Convention have been brought before the courts.

However, the Committee notes that, in its concluding observations of 3 February 2016, the UN Committee against Torture (CAT) expressed its concern at consistent reports of massive detentions of persons in the context of demonstrations and the alleged restriction to the detainees' legal safeguards. According to the information provided by the Government to the CAT, 511 persons were arrested in connection with an assembly that followed an annual march on 1 July 2014 (CAT/C/CHN-HKG/CO/5, paragraph 12). The CAT also expressed its concern at consistent reports of excessive use of tear gas, batons and sprays against protesters during the 79-day protest of the so-called “umbrella” or “occupy” movement in 2014, as well as at consistent reports that police resorted to violence against more than 1,300 people, and around 500 were subsequently admitted to hospitals (paragraph 14).

The Committee also notes that, on 18 August 2017, a court decision was handed down against three persons in relation to the mass demonstration in 2014 for inciting others to take part in an unlawful assembly, or for taking part in an unlawful assembly under section 18 of the Public Order Ordinance. During the first instance, three defendants respectively received 80 hours' community service, 120 hours' community service and three weeks' imprisonment with probation for one year. Upon the application of the Public Prosecutors for the review of the case, the Court of Appeal considered that the sentences of the first instance were inadequate and could not possibly reflect the gravity of the offences. It therefore sentenced the three defendants to 6–8 months' imprisonment respectively.

The Committee once again recalls that *Article 1(a)* of the Convention prohibits punishment by penalties involving compulsory labour, including compulsory prison labour, of persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to, or call for, violent means to these ends. ***The Committee therefore urges the Government to take the necessary measures to ensure that, both in law and in practice, no***

*sanctions involving compulsory labour can be imposed as a punishment for holding or expressing political views. In order to ascertain that the above provisions are not applied to acts through which citizens seek to secure the dissemination and acceptance of their views, the Committee requests the Government to continue to provide information on their application in practice, supplying copies of court decisions defining or illustrating their scope.*

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

## Congo

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 2(2)(a) of the Convention.* 1. *Work exacted under compulsory military service laws.* For many years the Committee has been drawing the Government's attention to the fact that section 1 of Act No. 16 of 27 August 1981 establishing compulsory military service is not in conformity with the Convention. Under this provision, national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Committee has repeatedly emphasized that work exacted from recruits as part of compulsory national service, including work related to national development, is not purely military in nature and is therefore contrary to *Article 2(2)(a)* of the Convention.

The Committee notes that the Government once again indicates that it is committed to repealing the abovementioned Act and this will be seen in practice in the revision of the Labour Code, which is in progress. ***The Committee again expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to amend or repeal the Act establishing compulsory military service so as to bring the legislation into conformity with the Convention. The Government is requested to supply information on any progress made in this respect.***

2. *Youth brigades and workshops.* In its previous comments the Committee noted the Government's indication that Act No. 31-80 of 16 December 1980 on guidance for youth had fallen into disuse since 1991. Under this Act, the party and mass organizations were supposed to create, over time, all the conditions for establishing youth brigades and organizing youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.). The Committee once again notes the Government's indication that it is committed to repealing the abovementioned Act and this will be seen in practice in the revision of the Labour Code, which is in progress. ***The Committee expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to formally repeal Act No. 31-80 of 16 December 1980 on guidance for youth.***

*Article 2(2)(d). Requisitioning of persons to perform community work in instances other than emergencies.* For many years the Committee has been drawing the Government's attention to the fact that Act No. 24-60 of 11 May 1960 is not in conformity with the Convention in that it allows the requisitioning of persons to perform community work in instances other than the emergencies provided for under *Article 2(2)(d)* of the Convention, and provides that persons requisitioned who refuse to work are liable to imprisonment ranging from one month to one year.

The Committee again notes the Government's indication that this Act has fallen into disuse and may be considered as repealed, in view of the fact that the Labour Code (section 4) and the Constitution (article 26), which prohibit forced labour, annul all the provisions of national law which are contrary to them. The Government explains that, in order to avoid any legal ambiguity, a text will be adopted enabling a clear distinction to be made between work of public interest and the forced labour prohibited by the Labour Code and the Constitution. The Government also indicates that the practice of mobilizing sections of the population for community work, on the basis of the provisions of section 35 of the statutes of the Congolese Labour Party (PCT), no longer exists. Tasks such as weeding and clean-up work are carried out by associations, state employees and local communities on a voluntary basis, therefore without any compulsion involved. Moreover, the voluntary nature of work for the community will be established in the revision of the Labour Code in such a way as to clearly bring the national legislation into conformity with the provisions of the Convention. ***The Committee notes this information and hopes that appropriate measures will be taken to clarify the situation in both law and practice, especially by the adoption of a text enabling a distinction to be made between work in the public interest and forced labour.***

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

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

## Democratic Republic of the Congo

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1), 2(1) and 25 of the Convention.* *Forced labour and sexual slavery in the context of the armed conflict.* In its previous comments, the Committee noted several reports from, inter alia, the Secretary-General of the United Nations (UN), the UN Security Council and the UN High Commissioner for Human Rights on the situation in the Democratic Republic of the Congo (documents A/HRC/27/42, S/2014/697, S/2014/698 and S/2014/222). The Committee noted that while these reports recognized the efforts made by the Government to prosecute the perpetrators of human rights violations, including public officials, they nevertheless expressed concern at the human rights situation and reports of violence, including sexual violence, committed by armed groups and the national armed forces. The Committee also noted the efforts made by the Government to combat the massive human rights violations.

The Committee notes the Government's indication in its report that it has taken the following measures to protect victims of sexual violence and facilitate their reintegration. The laws on sexual violence now supplement the Penal Code, which did not contain all the offences criminalized under international law. The Government also indicates that it has set up three local police units to ensure the protection of civilians in the zones of armed conflict.

The Committee notes that, in his April 2017 report on conflict-related sexual violence, the UN Secretary-General stated that in 2016, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) verified 514 cases of conflict-related sexual violence committed against 340 women, 170 girls and one boy. MONUSCO rescued 40 girls, some of whom reported being subjected to sexual slavery. Verdicts were also handed down in cases involving four combatants affiliated with the then *Mouvement du 23 Mars* for rape and three Nyatura combatants for sexual slavery (S/2017/249, paragraphs 32, 33 and 35).

While noting the difficult situation in the country, the Committee is bound to express *concern* at the sexual violence committed against civilians, particularly women who are subjected to sexual exploitation. ***The Committee urges the Government to step up its efforts to put an end to such acts of violence against civilians, which constitute a grave violation of the Convention, and to take immediate and effective measures so that appropriate criminal penalties are imposed on the perpetrators of these acts and the practice of sexual slavery and forced labour does not remain unpunished. It also urges the Government to intensify its efforts to ensure that the victims of such violence are fully protected. Lastly, the Committee requests the Government to provide information on the results achieved in this regard.***

*Article 25. Criminal penalties.* For several years, the Committee has been drawing the Government's attention to the lack of adequate criminal penalties in its legislation for the imposition of forced labour. With the exception of section 174(c) and (e) regarding forced prostitution and sexual slavery, the Penal Code does not establish appropriate criminal penalties to punish the imposition of other forms of forced labour. Moreover, the penalties established by the Labour Code in this respect are not of the dissuasive nature required by *Article 25* of the Convention (section 323 of the Labour Code establishes a principal penalty of imprisonment of a maximum of six months and/or a fine).

The Committee notes the absence of information from the Government on this matter. ***The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure the adoption in the very near future of adequate legislative provisions, which allow that, in accordance with Article 25 of the Convention, effective and dissuasive criminal penalties can be imposed in practice on persons exacting forced labour.***

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

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2001)***

*Article 1(a) of the Convention. Prison sentences involving an obligation to work imposed as a penalty for the expression of political views.* Since 2005, the Committee has been drawing the Government's attention to certain provisions of the Penal Code and other legal provisions regulating freedom of expression under which criminal penalties (penal servitude) entailing compulsory labour (section 8 of the Penal Code) may be imposed in the situations covered by *Article 1(a)* of the Convention, namely:

- Penal Code, sections 74, 75 and 76: injurious allegations and insults; sections 136–137: contempt towards members of the National Assembly, the Government and depositaries of the public authority or law enforcement officers; section 199bis and ter: dissemination of false rumours liable to alarm the population; section 209: dissemination of tracts, bulletins or leaflets of foreign origin or inspiration liable to harm national interests; section 211(3): display in public places of drawings, posters, engravings, paintings, photographs and all objects or images liable to cause a breach of the peace.
- Sections 73–76 of Act No. 96-002 of 22 June 1996 establishing arrangements for the exercise of freedom of the press, which refer to the Penal Code for the definition and punishment of press-related offences.
- Legislative Ordinance No. 25-557 of 6 November 1959 on penalties to be applied for infringements of general measures.
- Legislative Ordinances Nos 300 and 301 of 16 December 1963 on the punishment of offences against the head of State and foreign heads of State.

The Committee asked the Government to provide information on the application in practice of the abovementioned provisions so that it could examine their scope.

The Committee notes the Government's indication in its report that section 5 of the Penal Code provides for compulsory labour among applicable penalties and section 5bis provides that the period of compulsory labour may range from one to 20 years. The Government also indicates that the penalty of penal servitude cannot be deemed equivalent to the penalty of forced labour. However, the Committee notes that, under section 8 of the Penal Code, any person sentenced to penal servitude shall be employed either inside the prison or outside the prison in one of the types of work authorized by the prison regulations or determined by the President of the Republic. It stresses once again that the Convention protects persons against the imposition of any kind of compulsory labour, including the compulsory labour imposed within the sanction of penal servitude and not only against the imposition of forced labour, in the five instances covered by *Article 1*.

Moreover, the Committee notes that the United Nations (UN) Human Rights Council in June 2017, expressed deep concern at reports of: restrictions on the freedoms of peaceful assembly, opinion and expression; violations of the right to liberty and security of person; threats against and intimidation of members of political parties, civil society representatives and journalists; and arbitrary detention (A/HRC/35/L.37).

The Committee also notes UN Security Council resolution 2360 (2017), in which the Security Council called for the immediate implementation of the measures specified in the 31 December 2016 agreement to support the legitimacy of the transitional institutions, including by putting an end to restrictions of the political space in the country, in particular arbitrary arrests and detention of members of the political opposition and of civil society, as well as restrictions of fundamental freedoms such as the freedom of opinion and expression, including freedom of the press (S/RES/2360 (2017)).

The Committee expresses its *concern* at the current human rights situation in the country and recalls that restrictions on fundamental rights and freedoms, including the freedom of expression, may affect the application of the Convention if such restrictions can result in the imposition of penalties that involve compulsory labour. In this regard, the Committee recalls that the Convention prohibits the use of compulsory prison labour as a punishment for the expression of certain political views or for opposition to the established political, social or economic system. ***The Committee urges the Government to take the necessary measures to bring the abovementioned provisions of the Penal Code, of Act No. 96-002 of 22 June 1996, of Legislative Ordinance No. 25-557 of 6 November 1959, and of Legislative Ordinances Nos 300 and 301 of 16 December 1963 into conformity with the Convention in order to ensure that no penalty entailing compulsory labour (including compulsory prison labour) can be imposed for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to provide information on progress made in this respect.***

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

## Dominica

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1983)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 1(1) and 2(1), (2)(a) and (d) of the Convention. National service obligations.* Over a number of years, the Committee has been requesting the Government to repeal or amend the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)). The Committee observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service, which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Committee pointed out that the above provisions are not in conformity with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development".

The Government indicates in its report that the item concerning the amendment of the legislation has been included in the Decent Work Agenda, and that the necessary measures will be taken to address the requests in relation to compliance with the Conventions with the technical assistance of the ILO. ***While having noted the Government's indications in its earlier reports that the National Service Act, 1977, has been omitted from the Revised Laws of Dominica, 1990, and that section 35(2) of the Act has not been applied in practice, the Committee trusts that appropriate measures will be taken in the near future in order to formally repeal the above Act, so as to bring national legislation into conformity with Conventions Nos 29 and 105 and that the Government will provide, in its next report, information on the progress made in this regard.***

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

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

## Egypt

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1955)**

*Articles 1(1) and 2(1) of the Convention. Use of conscripts for non-military purposes.* For a number of years, the Committee has been referring to section 1 of Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service, according to 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 the development of rural and urban societies, agricultural and consumers' cooperative associations, and work in production units of factories. The Committee considered that these provisions were incompatible both with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which provides for the abolition of any form of compulsory labour as a means of mobilizing and using labour for purposes of economic development. In this regard, the Government previously indicated that a

proposal had been submitted to the Committee on Law Revision at the Ministry of Social Solidarity to amend the Act on general (civic) service so as to provide for the voluntary nature of the service.

The Committee notes the Government's indication in its report that, the draft amendments to Act No. 76 of 1973 were prepared and are under examination by the legislative committee within the Ministry of Labour in order to be submitted without delay to the Parliament. The Government also states that no sanctions have been imposed on reluctant young persons (male and female) who refuse to participate in the general (civic) service. The Committee recalls 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 (see General Survey on the fundamental Conventions, 2012, paragraph 288). ***The Committee strongly encourages the Government to take the necessary measures to ensure that Act No. 76 of 1973 is amended so that the participation of young persons in the general (civic) service is voluntary, in accordance with both Conventions Nos 29 and 105. Pending the revision, the Committee once again requests the Government to provide information on the application of the above legislation in practice, including information on the number of persons who have applied for exemption from such service, the number of those whose applications have been refused and any sanctions imposed in this connection.***

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

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)***

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system.* Since 1964, the Committee has been drawing the Government's attention to certain provisions under which penal sanctions involving compulsory prison labour (pursuant to sections 16 and 20 of the Penal Code) may be imposed in situations covered by *Article 1(a)*, namely:

- section 178(3) of the Penal Code, as amended by Act No. 536 of 12 November 1953 and by Act No. 93 of 28 May 1995, regarding the production or possession with a view to the distribution, sale, etc., of any images which may prejudice the reputation of the country by being contrary to the truth, giving an inexact description, or emphasizing aspects which are not appropriate;
- section 80(d) of the Penal Code, as amended by Act No. 112 of 19 May 1957, in so far as it applies to the wilful dissemination abroad by an Egyptian of tendentious rumours or information relating to the internal situation of the country for the purpose of reducing the high reputation or esteem of the State, or the exercise of any activity which will prejudice the national interest;
- section 98(a)bis and (d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibits the following: advocacy, by any means, of opposition to the fundamental principles of the socialist system of the State; encouraging aversion or contempt for these principles; constituting or participating in any association or group pursuing any of the foregoing aims, or receiving any material assistance for the pursuit of such aims;
- sections 98(b) and (b)bis, and 174 of the Penal Code concerning advocacy of certain doctrines;
- section 102bis of the Penal Code, as amended by Act No. 34 of 24 May 1970, regarding the dissemination or possession of means for the dissemination of news or information, false or tendentious rumours, or revolutionary propaganda which may harm public security, spread panic among the people or prejudice the public interest;
- section 188 of the Penal Code concerning the dissemination of false news which may harm the public interest;
- the Public Meetings Act (No. 14 of 1923), and the Meetings Act (No. 10 of 1914), granting general powers to prohibit or dissolve meetings, even in private places.

The Committee also previously noted that the following provisions are enforceable with sanctions of imprisonment for a term of up to one year which may involve an obligation to perform labour in prison:

- section 11 of Act No. 84/2002 on non-governmental organizations prohibits associations from performing activities threatening national unity, violating public order or calling for discrimination between citizens on the grounds of race, origin, colour, language, religion or creed;
- sections 20 and 21 of Act No. 96/1996 on the reorganization of the press prohibit the following acts: attacking the religious faith of third parties; inciting prejudice and contempt for any religious group in society; and attacking the work of public officials.

In addition, the Committee noted the Government's explanations in its 2015 report that, Act No. 95 of 2003, which repealed Act No. 105 of 1980 concerning the establishment of state security courts, abolished the sanction of hard labour, and therefore the sanctions to which the Committee was referring had been amended. The Government also added that section 41 of Act No. 96/1996 on the reorganization of the press, as amended by Act No. 1 of 2012, specifies that detention shall not be authorized by the judge pending investigation of press-related charges. Subsequent to the 2012 amendment, section 20 of the Penal Code has also been amended to provide that the judge shall hand down a sentence of

hard labour whenever the period of punishment exceeds one year. The Government states that, as the penalties imposed for the violations cited in section 11 of Act No. 84 of 2002, and also those set out in sections 20 and 21 of Act No. 96/1996, are for less than one year, they are not incompatible with the Convention.

With regard to the Government's explanations on the abolition of the sanction of "hard labour", the Committee observed that under section 20 of the Penal Code, penalties of imprisonment still involve compulsory prison labour. The Committee drew the Government's attention to the fact that the application of the Convention is not restricted to sentences of "hard labour" or other particularly arduous forms of labour, as opposed to ordinary prison labour. The Convention prohibits the use of "any form" of compulsory prison labour, as a sanction for holding or expressing political views, or views ideologically opposed to the established political, social or economic system.

Finally, the Committee noted the Government's indication that Act No. 10 of 1914 which grants general powers to prohibit or dissolve meetings, even in private places, only prohibits assemblies which threaten public peace, and the penalties specified in this Act do not include imprisonment, unless the persons assembled have weapons, cause any death, or inflict intentional damage on public buildings and bodies, which reflects a violation of public peace. Moreover, Law No. 107 of 2013 on the right to public meetings and peaceful assemblies repealed Act No. 14 of 1923 on public meetings. According to the Government, Act No. 107 only punishes acts which violate the rules regulating the holding of meetings, processions and peaceful demonstrations.

While having noted the above explanations, the Committee observed that the European Parliament and the UN Human Rights Council had referred to Law No. 107 of 2013 on the right to public meetings and peaceful assemblies, and had called on the Government to end all acts of violence, intimidation and censorship against political dissenters, journalists and trade unionists. In this regard, the Committee urged the Government to take the necessary measures to bring the above legislation into conformity with the Convention.

The Committee notes with *regret* an absence of information on this point in the Government's report. The Committee observes that in a joint letter dated 29 July 2016 (Case No. EGY7/2016) issued by several bodies of the United Nations, including the Working Group on Arbitrary Detention, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the situation of human rights defenders (pursuant to Human Rights Council resolutions 24/7, 24/5, 24/6, 25/13 and 25/18) underlined that Law No. 107 of 2013, which severely limits freedom of peaceful assembly and association, is regularly invoked by the authorities to crack down on protesters with excessive or unnecessary force to disperse unauthorized demonstrations and other public gatherings, often resulting in serious injuries, detention and sometimes even death of protesters. According to the same document, nearly 60,000 persons have been detained for political reasons from July 2013 to July 2016.

The Committee further notes that in his report presented to the UN General Assembly in June 2017, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, reiterated his utmost concern at the past year's serious escalation of the crackdown on independent civil society, including on human rights defenders, lawyers, trade unions, journalists, political opponents and protestors in Egypt. The Special Rapporteur received a large amount of information regarding interrogations, judicial harassment, torture, ill-treatment, arbitrary detention, unfair trials, asset freezes, travel bans and closure orders of civil society organizations in Egypt. He expressed particular concern that the abovementioned persons appear to be targeted for peacefully carrying out their human rights activities as well as for legitimately exercising their rights to freedom of expression and freedom of association. He underlines that such attacks may be representative of intent by the authorities to intimidate and silence media, trade unions, organizations and human rights defenders operating in Egypt (A/HRC/35/28/Add.3, paragraph 548).

In view of the above, the Committee *deplores* that despite the comments it has been making for a number of years, the Meetings Act (No. 10 of 1914), Act No. 107 of 2013 on the right to public meetings and peaceful assemblies, Act No. 84/2002 on non-governmental organizations, Act No. 1 of 2012 on the reorganization of the press, as well as sections 80, 98, 102, 174 and 188 of the Penal Code, have not been amended to bring them into conformity with the Convention. The Committee once again recalls that restrictions on fundamental rights and liberties, including freedom of expression, may have a bearing on the application of the Convention if such measures are enforced by sanctions involving compulsory labour. Referring to its General Survey on the fundamental Conventions, 2012, paragraph 302, the Committee points out that the range of activities which must be protected from punishment involving compulsory labour, under *Article 1(a)*, include 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. The Committee finally emphasizes that the protection conferred by the Convention is not limited to the expression or manifestation of opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are protected by the Convention as long as they do not resort to or call for violent means to these ends. ***The Committee therefore once again urges the Government to take the necessary measures to ensure that no prison sentences involving compulsory labour are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. The Committee expresses the firm hope that the necessary measures***

*will be taken to bring the above legislation into conformity with the Convention, and requests the Government to provide information on the progress made in this regard.*

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

*[The Government is asked to reply in full to the present comments in 2018.]*

## Eritrea

### **Forced Labour Convention, 1930 (No. 29) (ratification: 2000)**

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017, as well as the Government's reply to these observations, received on 26 October 2017.

*Articles 1(1) and 2(1) of the Convention. Compulsory national service.* In the context of their previous examinations of the application of the Convention, both the Committee on the Application of Standards of the International Labour Conference and the Committee of Experts have urged the Government to amend or repeal the Proclamation on National Service (No. 82 of 1995) and the 2002 statement concerning the Warsai Yakaalo Development Campaign in order to bring an end to the generalized and systematic practice of the exaction of compulsory labour from the population in the context of programmes related to the obligation of national service.

The Committee noted that, at the legislative level, the Constitution establishes the obligation for citizens to perform their duty of national service (article 25(3)) and that the Proclamation on National Service specifies that this obligation concerns all citizens aged between 18 and 50 years (article 6). This obligation includes active national service and service in the reserve army. Active national service, which concerns all citizens aged between 18 and 40 years, is divided into two periods: six months of active national service in the National Service Training Centre; and 12 months of active military service and development tasks in the military forces (article 8). The objectives of national service include the establishment of a strong defence force based on the people to ensure a free and sovereign Eritrea. The objectives also include creating a new generation characterized by love of work and discipline, ready to participate and serve in the reconstruction of the nation, and to develop and reinforce the economy of the nation by "investing in development work of our people as a potential wealth" (article 5). The Committee also noted that, in practice, the conscription of all citizens between the ages of 18 and 40 years for an indeterminate period had been institutionalized through the Warsai Yakaalo Development Campaign, approved by the National Assembly in 2002. In this respect, the Government confirmed that, in the context of their national service, conscripts could be called upon to perform other types of work and that in practice they participated in many programmes, including the construction of roads and bridges, reforestation, soil and water preservation, reconstruction and activities intended to improve food security.

Both the Committee of Experts and the Conference Committee have emphasized that work exacted from the population as part of compulsory national service, including a broad range of activities, some of which relate to national development, is not of a purely military character. Such work therefore goes beyond the exception set out in *Article 2(2)(a)* of the Convention, under the terms of which any work or service exacted in virtue of compulsory military service laws is only excluded from the scope of application of the Convention on condition that it consists of work of a purely military character. This condition is explicitly intended to prevent the requisitioning of conscripts for the performance of public works, and has its corollary in Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the exaction of forced labour "as a method of mobilising and using labour for purposes of economic development". The Committee has also concluded, in light of the information on the duration and extent of the work exacted in the context of compulsory national service and the purposes for which the authorities have recourse to such labour, that this obligation goes beyond the power to mobilize labour envisaged in *Article 2(2)(d)* of the Convention, which shall be limited to genuine cases of emergency, or force majeure, that is a sudden, unforeseen happening calling for instant counter-measures.

The Committee notes that the Government reiterates that the duration of national service has been prolonged due to unrelenting threats and the state of belligerency of Ethiopia. The Warsai Yakaalo Development Campaign is a national strategy for the eradication of poverty and to safeguard the well-being of citizens, and is intended to achieve a policy of self-reliance based on the dedication of the people. The Government refers in this respect to the objectives of national service, as set out in Article 5 of the Proclamation on National Service, namely participation in the reconstruction of the nation and the strengthening of the national economy. The Government adds that, despite the threat of war, the Government has taken several measures to demobilize conscripts and to rehabilitate them within the civil service. An adequate salary scale has been introduced for members of the national service who have completed their duties successfully. Their status as civil servants demonstrates that they are no longer members of the national service. While the demobilization process was initially implemented successfully, the subsequent phases were terminated with the state of belligerency of Ethiopia. The Government reiterates that it has no option but to take the necessary measures of self-defence that are proportionate to the threat faced by Eritrea. In respect of this situation in practice, the Government views that the power to mobilize labour is related to a genuine situation of force majeure as it is designed for a certain or unforeseen happening in the future, and is therefore compatible with *Article 2(2)(d)* of the Convention.

The Committee notes that the IOE, in its observations, indicates that it is highly concerned by the situation described by the Committee for a number of years, and by the findings of the Commission of Inquiry on human rights in Eritrea, established by the United Nations Human Rights Council, and of a considerable number of NGOs, which report a large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of compulsory national service. The IOE emphasizes the urgency of bringing an end to this situation, which has been criticized in several international forums. Reiterating the concerns expressed by the Employer members in the Conference Committee with regard to the application of the Convention by Eritrea, the IOE observes that, although the Government indicated its commitment to work towards the abolition of forced labour, it has not sought ILO technical assistance or demonstrated any will to cooperate with the ILO.

In reply to the IOE's observations, the Government reiterates the explanations provided in its report on the reasons why the process of demobilization has been interrupted and the national service has been prolonged. It also emphasizes that the work exacted from the population in the framework of the programmes of the Warsai Yakaalo Development Campaign is afforded only to the interest of the community and not for the benefit of private companies or individuals. Overall, the purposes for which these programmes are used are limited to what is strictly required for the exigencies of the situation in Eritrea. Therefore, according to the Government, it is far from the truth to contend that the reality in Eritrea amounts to the systematic practice of imposing compulsory labour on the population.

Finally, the Committee notes that, in their latest reports, the Commission of Inquiry on human rights in Eritrea and the Special Rapporteur on the situation of human rights in Eritrea, both appointed by the United Nations Human Rights Council, have noted the absence of improvements in terms of reforming military/national service programmes (A/HRC/32/47 and A/HRC/32/CRP.1, of 9 May and 8 June 2016, and A/HRC/35/39 of 7 June 2017, respectively). The Committee observes that these two reports continue to refer to: the indefinite and arbitrary duration of conscription, which goes beyond the 18 months envisaged in the 1995 Proclamation, often being extended for several years; the use of conscripts to perform compulsory labour in a whole range of economic activities, including the public service and for private enterprises; and the non-voluntary nature of military service beyond the statutory 18-month duration. The Commission of Inquiry emphasizes that "current programmes serve primarily to boost economic development, to profit state-endorsed enterprises and to maintain control over the Eritrean population in a manner inconsistent with international law". The Committee also notes that the Special Rapporteur recognizes that the non-implementation of the decision of 2002 of the Eritrea–Ethiopia Boundary Commission (EEBC) is of particular concern, but nevertheless considers that the failure to implement this decision cannot serve as justification for the open-ended and arbitrary nature of Eritrea's military/national service programmes.

The Committee recalls that, although the Convention explicitly provides for a limited number of cases in which ratifying States may exact compulsory labour from the population, particularly in the context of normal civic obligations, compulsory military service and situations of emergency, the conditions under which compulsory labour is exacted are strictly defined and the work involved must respond to precise requirements to be excluded from the definition of forced labour. In light of the above and the information available to it, the Committee reaffirms that, in view of its duration, scope, objectives (reconstruction, action to combat poverty and reinforcement of the national economy), and the broad range of work performed, labour exacted from the population in the framework of compulsory national service goes beyond the exceptions authorized by Convention No. 29 and constitutes forced labour. It is also in violation of Article 1(b) of Convention No. 105, which prohibits the use of compulsory labour "as a method of mobilising and using labour for purposes of economic development". The Committee notes with *deep concern* that no progress has been achieved in law or practice to strictly limit the use of compulsory labour to the exceptions authorized by the Convention. ***The Committee therefore urges the Government to take the necessary measures as soon as possible to amend or repeal Proclamation No. 82 of 1995 on National Service and the 2002 Declaration on the Warsai Yakaalo Development Campaign with a view to: (a) limiting the work exacted from the population within the framework of compulsory national service to military training and work of a purely military character; and (b) limiting the exaction of compulsory work or services from the population to genuine cases of emergency, or force majeure (that is, a sudden and unforeseen happening), by ensuring that the duration and extent of such compulsory work or services are limited to what is strictly required by the exigencies of the situation.***

The Committee recalls that the Government can avail itself of the technical assistance of the ILO to help address the situation noted.

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

***[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure that no prison sentences (under the terms of which compulsory labour may be required) are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. In

this respect, it noted that several provisions of Press Proclamation No. 90/1996 establish restrictions on printing and publishing (concerning the printing or reprinting of an Eritrean newspaper or publication without a permit; printing or disseminating a foreign newspaper or publication prohibited from entering Eritrea; publishing inaccurate news or information disturbing public order (Article 15(3), (4) and (10))), which are punishable with penalties of imprisonment. Under the terms of Article 110 of the Transitional Penal Code of 1991, persons convicted to imprisonment are subject to the obligation to work in prison. The Committee noted in this regard that, in her May 2014 report, the United Nations Special Rapporteur on the situation of human rights in Eritrea indicated that violations of rights, such as infringements of freedom of expression and opinion, assembly, association and religious belief, were still as numerous.

The Committee notes the Government's indication in its report that it is well known that expressing a political opinion or belief is not a crime in Eritrea. Since independence, no citizen has been detained for expressing his or her opinion or for criticizing the Government. The only restrictions on freedom of expression are related to the rights of others, morality, sovereignty and national security. The Government refers to the 1997 Constitution which not only protects fundamental freedoms, such as freedom of expression and opinion, assembly, association and religious belief, but also provides judicial and administrative remedies in case of violation. With regard to religious freedom, the Government refers to Proclamation No. 73/1995 respecting religious institutions and activities and indicates that no interference is allowed in the exercise of the rights of any religion or creed on condition that they are not used for political purposes and are not prejudicial to public order or morality. The Committee also notes the Government's view that the situation described in the report of the United Nations Special Rapporteur on the situation of human rights in Eritrea is misrepresented and that several of the allegations contained in the report, to which the Committee referred, are untrue.

The Committee notes that, in its latest resolution on the situation of human rights in Eritrea, adopted in June 2017, the United Nations Human Rights Council expresses its "deep concern at the severe restrictions on the right to freedom to hold opinions without interference, freedom of expression, including the freedom to seek, receive and impart information, liberty of movement, freedom of thought, conscience and religion, and freedom of peaceful assembly and association, and at the detention of journalists, human rights defenders, political actors, religious leaders and practitioners in Eritrea" (A/HRC/RES/35/35). The Committee also notes that, in the context of the Working Group on the Universal Periodic Review, the Government accepted the recommendations of certain countries encouraging it to "reform legislation in the area of the right to freedom of conscience and religion"; ensure that "the rights of all its people to freedom of expression, religion, and peaceful assembly are respected"; and take the "necessary measures to ensure respect for human rights, including the rights of women, political rights, the rights of persons in detention and the right of freedom of expression as it pertains to the press and other media" (A/HRC/26/13/Add.1).

The Committee recalls that the Convention protects persons who hold or express political views or views ideologically opposed to the established political, social or economic system by prohibiting the imposition of penalties which may involve compulsory labour, including sentences of imprisonment including compulsory labour. Freedom of opinion, belief and expression are exercised through various rights, such as the right of assembly and association and freedom of the press. The exercise of these rights enables citizens to secure the dissemination and acceptance of their views, or to practice their religion. While recognizing that certain limitations may be imposed on these rights as a safeguard for public order to protect society, such limitations must be strictly within the framework of the law. ***In light of these considerations, the Committee expresses the firm hope that the Government will take all the necessary measures to ensure that the legislation that is currently in force, as well as any legislation that is being prepared concerning the exercise of the rights and freedoms referred to above, does not contain any provision which could be used to punish the expression of political opinions or views ideologically opposed to the established political, social or economic system, or the practice of a religion, through the imposition of a sentence of imprisonment under which labour could be imposed (as is the case for sentences of imprisonment in Eritrea). In this regard, the Committee requests the Government to provide information on any sentences of imprisonment imposed for violations of the provisions of the Press Proclamation (No. 90/1996) or Proclamation No. 73/1995 respecting religious institutions and activities, with an indication of the acts which gave rise to conviction to such penalties.***

*Article 1(b). Compulsory national service for purposes of economic development.* The Committee refers to its observation concerning the Forced Labour Convention, 1930 (No. 29), in relation to the broad range of types of work exacted from the population as a whole in the context of compulsory national service, as set out in the Proclamation on National Service No. 82 of 1995 and the 2002 Declaration on the "Warsai Yakaalo" Development Campaign. The Committee expresses ***deep concern*** at the absence of progress in law and practice to circumscribe the obligation of service within the limits authorized by the two forced labour Conventions. It recalls that this national service obligation, to which all citizens between the ages of 18 and 40 years are subject for an indeterminate period of time, has the objectives of the reconstruction of the country, action to combat poverty and the reinforcement of the national economy and, consequently, is in blatant contradiction with the objective of this Convention which, in *Article 1(b)*, prohibits recourse to compulsory labour "as a method of mobilising and using labour for purposes of economic development". ***The Committee therefore strongly urges the Government to take the necessary measures without delay for the elimination in law and practice of any possibility of using compulsory labour in the context of national service as a method of mobilizing labour for the purposes of economic development.***

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

[The Government is asked to reply in full to the present comments in 2018.]

## Fiji

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1974)**

*Article 1(a) of the Convention.* Sanctions of imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted that under the provisions of the Crimes Decree No. 44, 2009, sanctions of imprisonment (involving compulsory labour pursuant to section 43(1) of the Prisons and Corrections Act 2006) may be imposed in situations covered by *Article 1(a)* of the Convention, such sanctions being therefore incompatible with the Convention:

- section 65(2) provides for sanctions of imprisonment for: (a) making any statement or spreading any report, by any communication whatsoever including electronic communication, or by signs or by visible representation intended by the person to be read or heard, which is likely to: (i) incite dislike or hatred or antagonism of any community; or (ii) promote feelings of enmity or ill will between different communities, religious groups or classes of the community; or (iii) otherwise prejudice the public peace by creating feelings of communal antagonism; and (b) making any intimidating or threatening statement in relation to a community or religious group other than the person's own which is likely to arouse fear, alarm, or insecurity among members of that community or religious group;
- section 67(b), (c) and (d) provides for sanctions of imprisonment for any person who utters any seditious words; prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or imports any seditious publication.

The Committee also noted the Government's indication that sections 65(2) and 67(a), (b) and (c) of the Crimes Decree aim to protect the peace of all people and communities in Fiji, in particular, with regard to ethnic tensions that culminated in coups d'état in 1987 and 2000. The Government also stated that no persons or groups of persons have ever been charged under the mentioned provisions.

The Committee further observed that the Public Order (Amendment) Decree No. 1, 2012, amends certain provisions of the Public Order Act (POA), 1969, so as to strengthen sanctions of imprisonment applicable to the following circumstances:

- section 10, which amends section 14(b) of the POA, increases from three months to three years the sanction of imprisonment for: (a) using threatening, abusive or insulting words; or behaving with intent to provoke a breach of the peace in any public place or at any meeting; or (b) having been given by any police officer any directions to disperse or to prevent obstruction or for the purpose of keeping order in any public place, without lawful excuse, contravenes or fails to obey such direction;
- section 13, which amends section 17 of the POA, establishes a new element under the offence of "inciting racial antagonism" (spreading any report or making any statement which is likely to undermine or sabotage or attempt to undermine or sabotage the economy or financial integrity of Fiji, section 17(1)(a)(v)), and increases from one to ten years the sanction of imprisonment applicable to any person violating section 17 and its subsections.

The Committee observed that the provisions of the Crimes Decree and of the Public Order (Amendment) Decree referred to above are formulated in such general terms that they may lead to the imposition of penalties involving compulsory labour as a punishment for the peaceful expression of views or of opposition to the established political, social or economic system, and that such penalties are incompatible with the Convention. It therefore requested the Government to take measures to review the abovementioned provisions in order to bring them into conformity with the Convention.

The Committee notes the absence of information in the Government's report. *The Committee therefore urges the Government to take the necessary measures to amend the abovementioned provisions, either by repealing them, by limiting their scope to acts of violence or incitement to violence, or by replacing sanctions involving compulsory labour with other kinds of sanctions (e.g. fines), in order to ensure that no form of compulsory labour (including compulsory prison labour) may be imposed on persons who, without using or advocating violence, express certain political views or oppositions to the established political, social or economic system. It also requests the Government to provide information on any progress made in this regard.*

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

## Guyana

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1966)**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2007. The Committee also notes that the Government had been requested to

provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* The Committee has noted the adoption of the Combating of Trafficking in Persons Act, 2005, as well as the Government's indication that 300 volunteers have been trained to identify cases of trafficking. **The Committee would appreciate it if the Government would provide information on the following matters:**

- *the activities of the task force to develop and implement a national plan for the prevention of trafficking in persons, to which reference is made in section 30 of the above Act, supplying copies of any relevant reports, studies and inquiries, as well as a copy of the National Plan;*
- *statistical data on trafficking which is collected and published by the Ministry of Home Affairs in virtue of section 31 of the Act;*
- *any legal proceedings which have been instituted as a consequence of the application of section 3(1) of the 2005 Act on penalties, supplying copies of the relevant court decisions and indicating the penalties imposed, as well as the information on measures taken to ensure that this provision is strictly enforced against perpetrators, as required by Article 25 of the Convention.*

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

## Kenya

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views. Penal Code and the Public Order Act.* For many years, the Committee has been referring to certain provisions of the Penal Code and the Public Order Act, under which sentences of imprisonment may be imposed as a punishment for participating in certain meetings and gatherings or the publication, distribution or importation of certain kinds of publications. These sentences involve compulsory labour under Rule 86 of the Prison Rules. The Committee has been referring, in particular, to section 5 of the Public Order Act (Cap. 56), under which the police is entitled to control and direct the conduct of public gatherings and has extensive powers to stop or prevent the holding of public gatherings, meetings and processions (section 5(8)–(10)), contraventions being punishable with imprisonment (sections 5(11) and 17), which involves compulsory labour. The Committee has been also referring to section 53 of the Penal Code, under which printing, publishing, distributing, offering for sale, etc. of any prohibited publication is punishable with imprisonment; under section 52 of the Penal Code any publication can be declared a prohibited publication if it is necessary in the interests of public order, public morality or public health.

The Committee observes an absence of information on this point in the Government's report.

The Committee once again recalls that *Article 1(a)* of the Convention prohibits the use of “any form of forced or compulsory labour”, including compulsory prison labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. Referring to paragraph 303 of its 2012 General Survey on the fundamental Conventions, the Committee points out that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention if they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system, whether the prohibition is imposed by law or by an administrative decision. Such views may be expressed orally or through the press or other communications media or through the exercise of the right of association (including the establishment of political parties or societies) or participation in meetings and demonstrations.

The Committee observes that the scope of the provisions of the Penal Code and the Public Order Act referred to above is not limited to acts of violence or incitement to violence and their application may lead to the imposition of penalties involving compulsory labour as a punishment for various types of non-violent actions relating to the expression of views through certain kinds of publications and participation in public gatherings. **The Committee therefore, once again expresses the firm hope that the provisions of the Penal Code and the Public Order Act referred to above will be brought into conformity with the Convention (e.g. by limiting their scope to acts of violence or incitement to violence or by replacing sanctions involving compulsory labour with other kinds of sanctions, such as fines) and that the Government will soon be in a position to report on the progress made in this regard.**

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

## Lebanon

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1977)**

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers to conditions of forced labour.* In its earlier comments, the Committee noted the observation of 2013 from the International Trade Union Confederation (ITUC), indicating that there are an estimated 200,000 migrant domestic workers employed in Lebanon. These workers are excluded from the protection of the Labour Law, have a legal status tied to a particular employer under the *kafala* (sponsorship) system, and legal redress is inaccessible to them. Moreover, they are subjected to various

situations of exploitation, including delayed payment of wages, verbal, and sexual abuse. The Committee also requested the Government to take the necessary measures to ensure that the Bill regulating the working conditions of domestic workers, as well as the Standard Unified Contract (SUC) regulating their work are adopted in the very near future.

The Committee notes the Government's indication in its report that, the Bill regulating the working conditions of domestic workers was drafted in conformity with Domestic Workers Convention, 2011 (No. 189), and the Bill has been submitted to the Council of Ministers for discussion. The Bill will provide a certain number of safeguards, including social security coverage; decent accommodation; the timely payment of wages through bank transfer; hours of work (eight hours per day); sick leave; and a day of rest. The Government also indicates that a Steering Committee has been established under the Ministry of Labour in order to deal with issues related to migrant domestic workers and is composed of relevant Ministerial Departments, representatives of the private recruitment agencies, NGOs, certain international organizations, as well as representatives of certain embassies. A representative from the ILO Decent Work Technical Support Team in Beirut is also participating in the Steering Committee.

Moreover, the Government indicates that the Ministry of Interior and the Ministry of Labour have taken a series of preventive measures, including awareness raising campaigns through the media; the establishment of a shelter "Beit al Aman" for migrant domestic workers who are facing difficulties in collaboration with Caritas; the appointment of social assistants who look into the working conditions of migrant domestic workers in their workplaces; the training of labour inspectors on decent working conditions; and the conclusion of a series of Memoranda of Understanding (MOUs) with sending countries, such as the Philippines, Ethiopia and Sri Lanka. The Government further states that the Ministry of Labour has set up a specialized office for complaints and a hotline to provide legal assistance to migrant domestic workers. Moreover, under the Recruitment Agencies of Migrant Domestic Workers Decree No. 1/168 of 2015, it is prohibited to impose recruitment fees on all workers.

The Committee further notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) welcomed the various measures adopted by the State party to protect the rights of women migrant domestic workers, including issuing unified contracts, requiring employers to sign up to an insurance policy, regulating employment agencies, adopting a law criminalizing trafficking in persons and integrating such workers into the social charter and the national strategy for social development. The CEDAW, however, expressed concern that the measures have proved insufficient to ensure respect for the human rights of those workers. The CEDAW is equally concerned about the rejection by the Ministry of Labour of the application by the National Federation of Labour Unions to establish a domestic workers' union, the absence of an enforcement mechanism for the work contracts of women migrant domestic workers, limited access for those workers to health care and social protection and the non-ratification of Convention No. 189. The CEDAW was further concerned about the high incidence of abuse against women migrant domestic workers and the persistence of practices, such as the confiscation of passports by employers and the maintenance of the *kafala* system, which place workers at risk of exploitation and make it difficult for them to leave abusive employers. The CEDAW was deeply concerned about the disturbing documented reports of migrant domestic workers dying from unnatural causes, including suicides and falls from tall buildings, and about the failure of the State party to conduct investigations into those deaths (CEDAW/C/LBN/CO/4-5, paragraph 37).

While taking note of the measures taken by the Government, the Committee notes with *concern* that migrant domestic workers are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical abuse. Such practices might cause their employment to be transformed into situations that amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to provide migrant domestic workers with an adequate legal protection, by ensuring that the Bill regulating the working conditions of domestic workers will be adopted in the very near future and to provide a copy of the legislation, once adopted. The Committee also urges the Government to take the necessary measures to ensure that migrant domestic workers are fully protected from abusive practices and working conditions that amount to forced labour.***

*Article 25. Penal sanctions for the exaction of forced labour.* In its earlier comments, the Committee noted that according to the ITUC's information, it was found that a lack of accessible complaint mechanisms, lengthy judicial procedures, and restrictive visa policies dissuade many workers from filing or pursuing complaints against their employers. Even when workers file complaints, the police and judicial authorities regularly fail to treat certain abuses against domestic workers as crimes. The Committee also noted the Government's indication that section 569 of the Penal Code, which establishes penal sanctions against any individual who deprives another of their personal freedom, applies to the exaction of forced labour. It requested the Government to provide information on any legal proceedings which had been instituted on the basis of section 569 as applied to forced labour and on the penalties imposed.

The Committee further notes that in its 2015 concluding observations, the CEDAW observed that migrant domestic workers face obstacles with regard to their access to justice, including fear of expulsion and insecurity of residence.

The Committee notes the Government's indication that the work of migrant domestic workers is regulated by the SUC and that the application of section 569 of the Penal Code is of the competency of the judiciary when a violation is detected. The Committee also notes copies of court decisions provided by the Government. It observes that the cases are related to non-payment of wages, harassment and working conditions of migrant domestic workers. In all cases employers have been sentenced to pay a monetary penalty to compensate the workers.

While noting this information, the Committee recalls that *Article 25* of the Convention provides that the exaction of forced labour shall be punishable as a penal offence. ***The Committee therefore urges the Government to take the necessary measures to ensure that employers who engage migrant domestic workers in situations amounting to forced labour are subject to really adequate and strictly enforced penalties. It requests the Government to provide information on measures taken in this regard.***

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

## Mauritania

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the General Confederation of Workers of Mauritania (CGTM), received on 1 and 4 September 2017 respectively, as well as those by the International Organisation of Employers (IOE), received on 1 September 2017.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

*Articles 1(1), 2(1) and 25 of the Convention. Slavery and the vestiges of slavery.* In its previous comments, the Committee noted the report of the direct contacts mission, which visited Mauritania in October 2016, and requested the Government to continue taking action to combat slavery and its vestiges. It particularly insisted on the need to: (a) reinforce the criminal investigation and prosecution system, particularly the three special criminal courts competent in matters relating to slavery, to ensure the effective application of the 2015 Act criminalizing slavery and punishing slavery-like practices (hereinafter the 2015 Act); (b) have reliable data on the nature and prevalence of slavery-like practices; (c) ensure that the multisectoral approach and inter-ministerial coordination applied to combat slavery is accompanied by an inclusive approach involving the social partners and civil society; and (d) strengthen the protection of victims so that they can assert their rights and stand up to any social pressure.

The Committee notes the discussion in June 2017 in the Conference Committee and notes that the Conference Committee urged the Government to continue its efforts to combat slavery and its vestiges. It expressed its deep concern at the persistence of slavery and the low number of prosecutions brought against the perpetrators of the crime of slavery. The Conference Committee requested the Government to take a series of measures, detailed below, and to request ILO technical assistance and accept a high-level mission.

The Committee welcomes the fact that the Government accepted a high-level mission in April 2018 and the continuation of the ILO technical cooperation project to support implementation of the 2015 Act and strengthen the Government's efforts to bring an end to the vestiges of slavery. The Committee also welcomes the fact that the Government revised, with those responsible for the technical cooperation project, the activities to be undertaken, taking into account the 12 recommendations made by the Conference Committee to the Government. ***The Committee trusts that the Government will take all the necessary measures, both in the framework of the technical cooperation project and the inter-ministerial committee responsible for implementing the roadmap, to implement the recommendations of the Conference Committee as well as those by this Committee.***

#### **(a) Effective enforcement of the legislation**

With regard to the effective enforcement of the 2015 Act, the Committee previously emphasized that it was indispensable for the three special criminal courts competent in matters relating to slavery to operate effectively and that, in general, the whole of the criminal investigation and prosecution system should be reinforced. The Conference Committee also recalled the importance of creating specialized units in the Office of the Public Prosecutor and the forces of order to gather proof and ensure that the actions brought before the criminal courts are processed within a reasonable period. In its report, the Government refers to the organization, by the Ministry of Justice, with the support of the technical cooperation project, of seminars on the implementation of the 2015 Act in various regional capitals and in the three regions in Nouakchott. Consultations have also been held to evaluate the knowledge and training needs of the staff of the special criminal courts, the forces of order and the administrative and municipal authorities concerning the scope of application of the 2015 Act. The training modules have therefore been discussed with all stakeholders concerned. In addition, a group of experts has been established to prepare specific training modules on the effective management of complaints for all those who intervene in judicial procedures.

The Committee notes that, in its observations, the ITUC indicates that the effective enforcement of the 2015 Act still poses a major challenge. Therefore, even though they have been established for two years, the special criminal courts in Nouakchott and Nouadhibou have not issued a single ruling. The court in Nema issued one decision in May 2016 in which the penalties imposed fell far short of those set out in law. The ITUC adds that civil society organizations are not aware of any other cases under way or even scheduled to come before the special criminal courts. The reasons for this include the reluctance of the police and the judicial authorities to investigate or launch proceedings after cases have been brought to their attention by associations; the reclassification of crimes as less serious offences; the settling of some cases informally; and the absence of a mechanism for the identification and protection of victims before and during proceedings.

The Committee recalls that, under the terms of *Article 25* of the Convention, member States are obliged to ensure that the penalties provided for by law for the exaction of forced labour are really adequate and strictly enforced. While noting the efforts made to raise awareness of the 2015 Act and strengthen the training of the various actors in the enforcement system in this regard, the Committee notes that these efforts have not yet been demonstrated in practice in the form of the examination of a certain number of cases of slavery by the special criminal courts. ***The Committee therefore expresses the firm hope that the Government will continue to take the necessary measures to strengthen the knowledge and capacities of all the actors involved in the enforcement system for the 2015 Act to ensure that no cases of slavery go unpunished. Recalling, in this regard, that it is essential that these authorities are in a position to gather evidence, assess the facts correctly and initiate the corresponding judicial procedures, the Committee requests the Government to provide information on the creation of specialized units in the Office of the Public Prosecutor and the forces of order. Lastly, the Committee reiterates its request for information on the number of cases of slavery reported to the authorities, the number which resulted in judicial action, and the number and nature of the convictions handed down. Please also indicate whether victims of slavery have been compensated for the damage they suffered, in accordance with section 25 of the 2015 Act.***

#### (b) *Assessment of the real situation in relation to slavery*

In its previous comments, the Committee noted that the direct contacts mission considered that “slavery and the vestiges of slavery are two phenomena which do not cover the same situations, do not have the same scope and call for different targeted measures”. It also indicated that “a qualitative and/or quantitative study should make it possible to provide a specific and objective basis for the discussions, thereby calming the debate and demystifying the issue at both the national and international levels”. The need to conduct a study has been emphasized for some years by the Committee of Experts as well as the Conference Committee, which requested the Government, in June 2017, to conduct a complete analysis in relation to the nature and incidence of slavery as a basis for improving targeted actions to eradicate slavery. The Committee welcomes the Government’s indication, in a communication of 27 September 2017, according to which the terms of reference of a qualitative study have been elaborated and will be approved at a round table which will be organized before the end of the year, in cooperation with the competent ILO services. The study will assess the recruitment procedures, working conditions and vulnerabilities which may arise in an exploitative relationship, thereby providing a basis for assessing situations involving the risk of forced labour.

The Committee recalls that the relationship between victims and their master is multidimensional. The direct contacts mission emphasized in this regard that the economic, social and psychological dependence of victims varies in degree and results in a broad range of situations. ***The Committee expects that the Government will take the necessary measures to conduct rapidly, with ILO assistance, the planned study and that this study will provide reliable data on the nature and prevalence of slavery-like practices in Mauritania. In this regard, the Committee firmly encourages the Government to ensure that the issue of economic, social and psychological dependence is taken into consideration when assessing whether a person has expressed free and informed consent to work and whether the consent expressed is truly devoid of all threat or pressure. The Committee also draws the Government’s attention to the need to involve, as early as possible, all the actors concerned, particularly the social partners, in the process of conducting the study (terms of reference, definitions, implementation).***

#### (c) *Inclusive and coordinated action*

The Committee previously noted the multisectoral approach and the inter-ministerial coordination which have been established to combat slavery and its vestiges, through the adoption of the roadmap to combat the vestiges of slavery. It noted that the implementation of the recommendations of the roadmap lay with an Inter-ministerial Technical Committee chaired by the Prime Minister and that 70 per cent of the recommendations had been implemented. The Committee expressed the hope that, following the implementation of the 29 recommendations provided for by the roadmap, the Inter-ministerial Technical Committee would undertake an evaluation of the impact of the measures taken. The Committee notes that the Government indicated to the Conference Committee that the evaluation had been conducted in April 2017. The Committee ***regrets*** that the Government has not provided more specific information on the evaluation carried out and its findings. ***Recalling that action to combat slavery requires the commitment of all actors within the framework of coordinated action carried out at the highest level, the Committee once again requests the Government to provide information on the findings of the evaluation of the implementation of the roadmap, specifying the results achieved and the obstacles identified. Please also specify the decisions taken by the Inter-ministerial Committee in this regard. The Committee requests the Government to indicate the new actions identified and to specify how civil society organizations engaged in combating slavery and its vestiges, and the social partners, have been involved throughout this process.***

#### (d) *Identification, protection and reintegration of victims*

The Committee previously emphasized that victims of slavery are in a situation of great vulnerability which requires specific action by the State. Both the Committee of Experts and the Conference Committee have requested the Government to ensure that victims who are identified or who report their situation are protected against reprisals or social pressure; that they benefit from social and economic integration measures; and that they receive compensation for the damages suffered. The Committee notes the information communicated in this regard on the activities undertaken within

the framework of the technical cooperation project. Regarding the identification of victims, the General Labour Directorate, in close coordination with the labour inspectorate, is preparing a technical proposal for a victim identification mechanism. The adaptation of the ILO list of indicators of forced labour to the national context is also under examination. With regard to the suggestion of the direct contacts mission to implement a mechanism to provide shelter for victims, the Government emphasizes that this function is fulfilled by the Tadamoun Agency (National Agency to Combat the Vestiges of Slavery) and civil society organizations which receive State subsidies. With regard to the reintegration of victims, the Government indicates that the Ministry of Labour and the Tadamoun Agency are developing a joint initiative intended to promote means of subsistence for victims, the two pillars of which will be vocational training and strengthening of entrepreneurial capacity. Lastly, the Committee notes the detailed information concerning the activities carried out by the Tadamoun Agency in the areas of basic infrastructure construction (schools, sanitation facilities, water supply, social housing) and the fight against poverty (modernization of the means of agricultural production, micro-projects for income-generating activities). The Committee notes the targeted measures taken by the Government to reduce the severe poverty of a section of the population. The Committee considers that these activities contribute to reducing the risk of these persons being in a situation of economic and social dependence which could lead to their exploitation. ***The Committee encourages the Government to pursue this type of preventive action.***

However, regarding the victims of slavery, the Committee notes that their identification and effective assistance remains a challenge to be overcome. This is evidenced by the lack of information on the number of victims identified by the public authorities, the number who have benefited from legal support and social assistance, and those who have obtained compensation. ***The Committee trusts that the Government will take all the necessary measures to ensure that all the competent authorities are trained in the identification and protection of victims and that they cooperate with the civil society organizations to this end. It requests the Government to indicate the number of cases in which the Tadamoun Agency has been party to civil proceedings, and the number of victims who have been supported by the Agency during the investigations and judicial proceedings. Lastly, the Committee requests the Government to provide information on the assistance provided to victims of slavery with a view to their economic and social reintegration.***

#### **(e) Awareness raising and action to combat stigmatization**

The Committee notes that, in its observations, the CGTM emphasizes that awareness raising is one of the most effective main approaches to the eradication of slavery, which is deeply rooted. The CGTM refers to the need to overcome the obstacles of ignorance, conservatism and the low level of social progress. The ITUC also indicates that the persons considered as belonging to the slave caste, but who no longer live in slavery, are victims of stigmatization and discrimination and are marginalized both economically and politically. Lastly, the Committee notes that both the CGTM and the ITUC refer to the harassment and detentions to which certain activists are subjected as a result of their action to denounce slavery. The Committee notes the information communicated by the Government concerning the awareness-raising measures taken, such as the organization of a new awareness-raising campaign; the selection and formulation of key messages based on the roadmap; and the organization of events for the national day to combat the vestiges of slavery.

***The Committee expects that the Government will continue to develop action, not only to raise awareness of the 2015 Act, but also to delegitimize slavery and combat the stigmatization and discrimination to which victims and their descendants are subjected. It requests the Government to refer to its comments on the application by Mauritania of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee also urges the Government to ensure that the persons and civil society organizations who denounce slavery and carry out peaceful activities to this end are not subjected to any intimidation.***

## **Pakistan**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

The Committee notes the observations of the All Pakistan Federation of Trade Unions (APFTU) received on 9 December 2016.

*Articles 1(1), 2(1) and 25 of the Convention. I. Debt bondage. 1. Legislative framework.* The Committee previously noted the information in the mission report of the tripartite inter-provincial workshop carried out in May 2013, within the framework of the Special Programme Account (SPA) project, that the adoption of provincial bonded labour abolition legislation, by the end of 2013, was included in the provincial time-bound action plans. The Committee urged the Government to take the necessary measures to ensure the adoption of legislation aimed at eliminating bonded labour.

The Committee notes the Government's statement in its report that, the Federal Bonded Labour System (Abolition) Act 1992 remains applicable in the Islamabad Capital Territory (ICT) and Balochistan Province. The Committee notes with *satisfaction* that, Khyber Pakhtunkhwa (KPK) Province has enacted the KPK Bonded Labour System Abolition Act 2015, and Sindh Province has enacted the Sindh Bonded Labour System (Abolition) Act 2015, both of which contain provisions prohibiting bonded labour, extinguishing remaining debts, and providing for criminal penalties in case of violations. The Committee further notes that the Punjab Prohibition of Child Labour at Brick Kilns Act 2016 also regulates the employment of adults by requiring written contracts (section 3), which shall specify the amount of wages, the amount of advance and the payback schedule for the advance given. Brick kiln owners or occupiers are also required to

send a copy of the contract to the inspector in the area. Moreover, such contracts may be terminated by either party given a 30-day prior notice in writing. However, the Committee notes the information of the APFTU that, despite the prohibition of bonded labour by law, this practice persists in brick kilns due to the absence of effective enforcement. ***The Committee therefore urges the Government to take the immediate measures to ensure the effective application of the newly enacted provincial legislation related to the abolition of bonded labour in practice, and to provide information in this regard.***

2. *Programmes of action.* The Committee previously noted that the Provinces of Sindh and Punjab had both adopted a Provincial Plan of Action to Combat Bonded Labour. Moreover, the Government indicated that the “Elimination of bonded labour in brick kilns” project was being implemented in Punjab. In addition, an ILO project entitled “Strengthening Law Enforcement Responses and Action against Internal Trafficking and Bonded Labour” began in 2010 in the Provinces of Sindh and Punjab, aimed at engaging brick kiln owners to institute practices towards the eradication of bonded labour, as well as efforts to link brick kiln workers with social safety nets.

The Committee notes the Government’s information that provincial governments are implementing various development projects to eradicate bonded labour. In Punjab, under a programme targeting brick kilns for the period of 2012–18 in four districts, 196 non-formal education centres are now operational in which 6,131 persons (3,143 males and 2,988 females) have been enrolled. Moreover, 1,423 brick kiln workers have obtained computerized national identity cards and the birth of 2,590 children have been registered in respective Union Councils. Punjab Province has also initiated an integrated project of elimination of child and bonded labour, which targets the rehabilitation of children working at brick kilns and the economic empowerment of their families. Moreover, the KPK Province has adopted a development scheme providing for the establishment of a child and bonded labour unit. ***The Committee takes due note of the measures undertaken by the Government and encourages it to pursue its efforts to combat and eliminate bonded labour, as well as to continue adopting measures aimed at supporting freed bonded labourers. It requests the Government to continue to provide detailed information on the specific measures implemented in the Punjab and other provinces in this regard, as well as information on the concrete results of these initiatives, including the number of bonded labourers and former bonded labourers, benefiting from these measures.***

3. *District vigilance committees.* The Committee previously noted the allegations from several national and international workers’ federations that the Bonded Labour System (Abolition) Act (BLSA) had not been properly applied and that the district vigilance committees (DVCs), set up under the BLSA, had not performed their functions of identifying and releasing bonded labourers. However, the Committee noted the Government’s statement that the DVCs were in place. Particularly, the DVCs in Punjab were reactivated following the direction of the Supreme Court of Pakistan. The Committee also noted the information contained in the mission report of the tripartite inter-provincial workshop indicating that the action plans developed by the Provinces of Balochistan, KPK and Punjab include reconstituting the DVCs by mid-2014. Moreover, the Committee noted that the time-bound action plans which included several provincial initiatives to strengthen monitoring, including undertaking raids related to bonded labour, the establishment of a bonded labour cell within the labour department, and the establishment of an anti-bonded labour force. The Committee further noted the Government’s indication that 370 cases have been registered by the local police related to bonded labour.

The Committee notes the Government’s information that DVCs are operational throughout Punjab and 93 meetings of these committees (in 36 districts) were held during the last six months in 2016 under the supervision of the respective District Coordination Officers. The Committee also notes that, the KPK and Sindh Provinces have enacted new laws on bonded labour, under which the DVCs will be re-established in accordance with the rules framed. Balochistan Province also indicates that the DVCs will be functionalized soon, and the Bonded Labour System (Abolition) Act 1992 is currently being implemented by the District Administration. The Committee further notes the Government’s indication that it is impossible to monitor bonded labour through the normal inspection procedure. Therefore DVCs are being established under the provincial bonded labour laws. ***The Committee therefore requests the Government to take the necessary measures to ensure that the DVCs will soon be re-established in KPK and Sindh Provinces under the new laws and functionalized in Balochistan, and to provide information on any progress made in this regard. It also requests the Government to provide information on the operation of the DVCs, including copies of monitoring or evaluation reports. The Committee once again requests the Government to indicate if any legal action has been taken against persons employing bonded labourers, and to provide information on the number of prosecutions, convictions, and specific penalties applied, as well as copies of relevant court decisions.***

4. *Data-gathering measures to ascertain the current nature and scope of bonded labour.* The Committee previously expressed the firm hope that the Government would carry out a statistical survey on bonded labour in the country. In this regard, the Committee noted the Government’s indication that provincial surveys of bonded labour have been included in the Provincial Plan of Action to Combat Bonded Labour of both Sindh and Punjab, and that these Provinces were working in consultation with employers’ and workers’ organizations to undertake this survey, using a valid methodology.

The Committee notes the Government’s information that, the provincial governments have indicated that the issue would be discussed in the upcoming provincial tripartite consultative committee meetings. The Ministry of Overseas Pakistanis and Human Resource Development (Ministry of OP&HRD) also plans to discuss this issue in the upcoming Federal Tripartite Consultative Committee meeting. The Committee also notes that, the international labour standards unit

in the Ministry of OP&HRD has worked on questions gauging instances of forced and bonded labour by recommending the inclusion of certain questions on the issue in the Labour Force Survey, including contracts of employment, wages, hours of work, working conditions and the right to leave employment. The Ministry has submitted this request to the Bureau of Statistics. Moreover, the KPK Province has indicated that it plans to carry out a study on bonded labour in brick kilns in the Peshawar and Nowshera districts. ***The Committee therefore strongly urges the Government to pursue its efforts to ensure that a survey of bonded labour will be undertaken in each province of the country in the near future, in cooperation with employers' and workers' organizations and other relevant partners. It requests the Government to continue providing information on the progress achieved in this regard, as well as copies of the surveys, once completed.***

*II. Trafficking in persons.* The Committee previously noted the information from the Ministry of the Interior that under the Prevention and Control of Human Trafficking Ordinance 2002 (PCHTO), there were 12 convictions and 14 acquittals in 2012, and eight convictions and four acquittals in the first half of 2013. In 2012, there were 440 cases pending, and 475 such cases as of June 2013. The Committee also noted the information from the United Nations Office for Drugs and Crimes (UNODC) that Pakistan is a source, transit, and destination country for men and women trafficked for the purposes of forced labour and sexual exploitation, with trafficking for forced labour being more widespread.

The Committee notes the Government's information in its report that the Government plans to tackle issues of internal trafficking through criminal law amendment. The Committee also notes that, the Criminal Law (Amendment) Act 2015 inserted a new section 369A to the Pakistan Penal Code 1860, penalizing human trafficking with a penalty of imprisonment from five to seven years, or a fine from 500,000 Pakistan rupees (PKR) to PKR700,000. Moreover, the Federal Investigation Agency maintains 27 anti-trafficking law enforcement units at the federal, provincial and local levels that investigate human trafficking and smuggling cases. The Committee further notes that, in 2015, Punjab Province reported 947 investigations, 928 prosecutions, and 22 convictions for trafficking for sexual exploitation, as well as 5,113 investigations, 1,956 prosecutions, and 60 convictions for sexual exploitation. KPK Province reported 27 investigations, 27 prosecutions, and zero convictions for trafficking for sexual exploitation and separately reported 156 investigations, 83 prosecutions, and zero convictions for abduction of women for sexual exploitation. However, Sindh Province reported zero investigations, prosecutions, and convictions for trafficking for sexual exploitation. Concerning trafficking for labour exploitation, Punjab, KPK, Azad Jammu and Kashmir, and Gilgit-Baltistan reported a total of 21 investigations, 15 prosecutions, and one conviction. Sindh Province reported zero investigations, prosecutions and convictions for trafficking for labour exploitation. The Government also reported that investigations were carried out against 158 alleged traffickers, of which 59 were prosecuted and 13 were convicted under the PCHTO in 2015, compared with 70 investigations, 50 prosecutions, and 17 convictions in 2014. The Committee further notes the information provided by the Government as follow-up to the concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) of 26 November 2015 that, the review of the draft Act to Prevent and Combat Trafficking in Persons, Especially Women and Children, 2013 is under consideration at the federal level (CEDAW/C/PAK/CO/4/Add.1, paragraph 27). The Committee notes with ***concern*** the significantly low number of convictions as compared to the overall number of investigations and prosecutions. ***The Committee accordingly urges the Government to strengthen its efforts to ensure that, in practice, persons who commit trafficking offences are subject to sufficiently adequate and dissuasive penalties. In this regard, it requests the Government to continue to provide statistics on the number of trafficking cases registered, as well as the number of prosecutions, convictions and the specific penalties imposed pursuant to related legislation. The Committee further requests the Government to provide information on any progress made regarding the adoption of the draft Act to Prevent and Combat Trafficking in Persons, Especially Women and Children.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

*Article 1(a) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views. Political parties.* For many years, the Committee has been referring to the Political Parties Act, 1962 (sections 2 and 7), which gave the authorities wide discretionary powers to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour. The Committee also noted that the proposal to amend certain laws, including the Political Parties Act 1962, were under consideration. However, the Committee noted the absence of information in the Government's report in this regard. The Committee notes with ***satisfaction*** that the Political Parties Act has been replaced by the Political Parties Order 2002, which does not contain any provisions regarding sanctions on individuals.

*Article 1(a), (c), (d) and (e). Penalties involving compulsory labour as a punishment for expressing political views, as a means of labour discipline, as a punishment for having participated in strikes, or as a means of religious discrimination.* The Committee previously referred to sections 10–13 of the Security of Pakistan Act 1952, sections 5, 26, 28 and 30 of the Press, Newspaper, News Agencies and Books Registration Ordinance 2002, section 32(2) and (3) of the Electronic Media Regulatory Authority Ordinance 2002 and sections 8 and 9 of the Anti-Terrorism Act 1997, which provide for restrictions on the expression of political views and penalties of imprisonment involving compulsory labour. The Committee also referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punishable with penalties of imprisonment (which may involve compulsory labour) for a term of up to three years. The Committee further noted that

certain provisions of the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, under which employees are prohibited from leaving their employment without the consent of the employer, as well as from striking, subject to penalties of imprisonment that involves compulsory labour.

The Committee notes with *interest* the Government's statement in its report that, the Ministry of Overseas Pakistanis and Human Resources Development (Ministry of OP&HRD) has submitted a proposal to the Ministry of Law and Justice to consider the following options to bring the above referred laws in compliance with the Convention 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;
- 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.

***The Committee therefore requests the Government to continue its efforts to bring the abovementioned laws into conformity with the Convention in the near future, and requests the Government to provide information on any progress made in this regard.***

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

## Peru

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

The Committee notes the observations sent by the Autonomous Workers' Confederation of Peru (CATP) on 1 September 2016.

*Articles 1(1) and 2(1) of the Convention. Efforts to combat forced labour.* For a number of years, the Committee has been examining the steps taken by the Government to combat the various forms of forced labour that exist in Peru (debt bondage inflicted on indigenous peoples in the logging sector, situations of forced labour in the small-scale mining sector, trafficking in persons and the exploitation of women in domestic service). The Committee previously asked the Government to take steps to reinforce the capacities of the National Committee on Combating Forced Labour (CNLCTF); to implement the various components of the Second National Plan to Combat Forced Labour (PNLCTF-II); and to expand the national legislation by adopting provisions in criminal law that specifically criminalize forced labour and define its constituent elements so as to cover all forced labour practices that exist in the country. The Committee notes the adoption on 5 January 2017 of Legislative Decree No. 1323, which strengthens action against femicide, family violence and gender-related violence. The Committee notes with *satisfaction* that the Decree incorporates a number of provisions into the Penal Code which criminalize forced labour practices: sections 153-B and 153-C, which define what constitutes "sexual exploitation" and "slavery and other forms of exploitation" and establish penalties of imprisonment of ten to 15 years; and section 168-B, which criminalizes "forced labour", defining it as subjecting or obliging a person, by whatever means or against his/her will, to perform work or service, whether paid or not, and providing for imprisonment of six to 12 years.

(a) *National Plan to Combat Forced Labour (PNLCTF).* The Committee noted that the goal of the PNLCTF-II was the eradication of forced labour by 2017, through the fulfilment of three strategic objectives: training and awareness raising with regard to forced labour; the establishment of an integrated system to identify, protect and reintegrate victims; and the identification and reduction of vulnerability factors inherent in forced labour. The Committee asked the Government to provide information on evaluations undertaken as part of the monitoring and appraisal of the implementation of the PNLCTF-II and on the provision of the resources needed to achieve the set objectives.

The Government indicates in its report that it is unable to provide information on fulfilment of the objectives of the plan, since the various entities constituting the CNLCTF have not used the established format when providing information. The Government explains that the entities concerned will receive training in this respect. It adds that one of the priorities of the CNLCTF is to set up regional committees, particularly in areas at risk, and to draw up regional plans for combating forced labour. In this regard, the Committee notes the CATP's concern at the fact that the lack of funding prevents the implementation of actions planned under the PNLCTF-II or the strengthening of CNLCTF capacities at both national and regional levels. The CATP also notes with regret the lack of regional committees for combating forced labour, particularly in the regions containing the areas most at risk.

***The Committee trusts that the Government will be able in its next report to send full information on the implementation of the three strategic objectives of the PNLCTF-II and on any evaluation of the measures adopted in this context. It strongly encourages the Government once again to strengthen the capacities of the CNLCTF at both the national and regional levels. Recalling that it is essential to strengthen the State's presence in regions with a marked prevalence of forced labour, the Committee hopes that it will be possible to draw up regional plans for combating***

*forced labour that take account of the specific features of forced labour situations that may exist in the various regions of the country.*

(b) *Diagnosis.* The Committee previously encouraged the Government to take all the necessary steps to ensure the production of a qualitative and quantitative survey to supplement the information already available on various forced labour practices, as provided for by the PNLCTF-II. In this regard, it observes that in March 2017 the Ministry of Employment and Employment Promotion (MTPE), the National Institute of Statistics and Information Technology (INEI) and the ILO signed a cooperation agreement aimed at collecting statistical information to discover the true extent of the problem of forced labour in the most “vulnerable” areas of the country. ***The Committee hopes that the Government will take all possible steps to ensure that such data can be collected quickly for analysis and for communication to the competent authorities so that these authorities can better target their action, make appropriate use of human and financial resources, and ensure that victims are identified.***

(c) *Labour inspection.* The Committee previously underlined the need to take appropriate measures to ensure the proper functioning of the new Special Labour Inspection Unit for Combating Forced and Child Labour (GEIT). The Government indicates in this respect that the 15 labour inspectors who constitute this group are based in the Lima area and have the same financial and material resources as the other labour inspectors in this area. The Government provides statistics on inspections and advisory visits conducted between 2014 and 2016 in relation to forced and child labour. These data show that the GEIT inspections mainly focus on monitoring child labour. No information has been sent on the findings of these inspections, the regions targeted, or the nature of violations recorded or penalties imposed. The Government also indicates that, taking account of the results achieved, the National Labour Inspection Supervisory Authority (SUNAFIL) has begun a restructuring of the GEIT. Moreover, in April 2016, the protocol for action on forced labour drafted by SUNAFIL was adopted. This contains basic guidance to ensure coordinated and effective action by the labour inspection system in relation to the prevention and elimination of forced labour (guidelines for the preparation of interventions, indicators for identifying situations of forced labour, standard questions, etc.). Lastly, SUNAFIL is conducting different types of awareness-raising, prevention and training activities for combating forced labour at both the national and regional levels.

The Committee observes that the CATP states in its observations that SUNAFIL is faced with a lack of funding, even though the regions where forced labour is suspected are remote and dangerous and data collection and inspections are expensive. The CATP considers that the Government should therefore request the necessary budgets for inspections to be performed.

The Committee notes this information and recalls the key role of labour inspection in combating forced labour. ***It requests the Government to continue its efforts and take all possible steps to ensure that the GEIT has adequate human and material resources to be able to cover the whole of the national territory quickly and effectively. Bearing in mind that as a result of inspections undertaken by the GEIT, it is possible to identify and release workers in situations of forced labour and to provide the courts with documents which will serve to launch civil and criminal proceedings against the perpetrators of these practices, the Committee requests the Government to provide detailed information on the number of inspections conducted, violations reported and administrative penalties imposed.***

*Article 25. Application of effective penalties.* The Committee previously underlined the need to supplement the criminal legislation in order to criminalize forced labour specifically and define the scope thereof so that the competent authorities have a greater capacity for conducting adequate investigations, instituting court proceedings and imposing penalties on perpetrators of the various forms of forced labour. It also emphasized the fact that, in order to reduce forced labour, it is essential that deterrent penalties are imposed on the perpetrators of such practices, in accordance with *Article 25* of the Convention. The Committee welcomes the provisions, including penalties, that have been incorporated into the Penal Code. ***It hopes that the adoption of these provisions will be accompanied by appropriate measures to strengthen the capacity of the law enforcement authorities with a view to ensuring the detection of forced labour, the identification of victims and the provision of necessary protection. The Committee also requests the Government to provide detailed information on the measures adopted to this end and also on inquiries conducted, judicial proceedings initiated and penalties imposed on the basis of the new provisions of sections 168-B, 153-B and 153-C of the Penal Code.***

***The Committee trusts that the Government will continue taking all possible steps to prevent and effectively combat all forms of forced labour existing in the country. It hopes that the technical assistance of the Office – which the Government continues to receive, particularly through the Bridge Project in Peru, which aims to help strengthen national public policies for combating forced labour – will help the Government to achieve tangible progress in this respect and also to provide detailed information on the measures taken.***

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

## Poland

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1958)***

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the detailed discussion which took place in the Conference Committee on the Application of Standards in June 2017 concerning the application by Poland of the Convention.

*Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee previously noted the observations of the Independent and Self-Governing Trade Union (“Solidarnosc”) that there had been exploitation of citizens of the Democratic People’s Republic of Korea (DPRK) for forced labour in Poland. In 2011, there were 239 DPRK workers brought legally to Poland, while the number in 2012 rose to 509. Reportedly they had to send back to the regime a large part of their legitimate earnings. Solidarnosc expressed its concern at the working conditions of those workers, which might be assimilated to forced labour. The Committee also noted the Government’s statement that, in 2016, comprehensive controls in selected entities known to employ DPRK citizens were carried out throughout the country. No cases of illegal employment were detected but a number of infringements of the provisions of the Act on Employment Promotion and provisions of the Labour Law were found. In particular, there were no instances of failure to pay or payment of a lower amount than that stated in the foreigners’ work permits, based on the evidence of payments presented by the employers, such as bank transfers and payrolls with signatures of DPRK citizens.

The Committee also noted that, according to the report of the Special Rapporteur of the United Nations on the situation of human rights in the DPRK, nationals of the DPRK are being sent abroad by their Government to work under conditions that reportedly amount to forced labour. Some 50,000 DPRK workers operate in countries such as Poland and mainly in the mining, logging, textile and construction industries. As examples of working conditions, the workers do not know the details of their employment contract and earn on average between \$120 and \$150 per month, while employers in fact pay significantly higher amounts to the Government of the DPRK (employers deposit the salaries of the workers in accounts controlled by companies from the DPRK). The workers are forced to work sometimes up to 20 hours per day with only one or two rest days per month and given insufficient daily food rations. They are under constant surveillance by security personnel and their freedom of movement is unduly restricted. Workers’ passports are also confiscated by the same security agents.

The Committee notes that, in its conclusion adopted in June 2017, the Conference Committee called upon the Government to increase its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to forced labour; to provide information on the measures taken to identify cases of forced labour to the Committee of Experts, paying particular attention to the situation of workers from the DPRK; to take immediate and efficient measures so that the perpetrators of such practices, if they occur, are prosecuted and that dissuasive penalties are issued; and to ensure that identified victims of forced labour have access to adequate protection and remedies.

The Committee notes the IOE’s statement that it is essential to assess fully and objectively whether the living and working conditions of these workers are in accordance with fundamental labour standards. If forced labour practices are detected, the victims should be identified and protected. Moreover, beneficiaries of such illegal practices should be identified and following a fair trial, punishments should be imposed that are commensurate with the gravity of the offences.

The Committee notes the Government’s information in its report that the Polish authorities, including the Embassy of Poland in Pyongyang, are not involved in employing citizens from DPRK or carry out any promotional activities in this regard. Their employment takes place only as an activity of individual entities. Foreign employees, including those from the DPRK, are subject to the same labour law as Polish citizens in principle. The Government indicates that, in 2016 and 2017, no new visa has been issued to DPRK citizens. As of 1 January 2017, there were 400 citizens from DPRK in Poland with valid residence permits, including 368 with temporary residence permits and 31 with long-term European Union (EU) residence permits, while not all of them are employed. In response to the signals revealed in 2016, the National Labour Inspectorate and the Border Guards carried out monitoring activities covering all entities employing the citizens of the DPRK, and no infringements seemed to relate to forced labour. However, the Government indicates that, the lack of cooperation between potentially affected people and monitoring authorities can be observed, which may hamper the objective assessment.

The Committee also notes the Government’s information that a number of violations of provisions of the Act on the Promotion of Employment, as well as regulations in the scope of Labour Law were identified. Among the examples of inspections concerning citizens of DPRK, the Committee notes that, 51 persons were found carrying out paid work on a construction site in Warsaw. They were employed by a DPRK company under employment contracts governed by the DPRK law and delegated to work in Poland, and their salaries were paid to their wives in DPRK. On another construction site, 60 workers were found delegated to work there by the same DPRK company. Although no failure to ensure the minimum employment standards in Poland was detected, it was found that the passports of all the workers from DPRK were kept by a representative of that company. They also gave their residence cards to the representative of the company after the completion of the inspection. Moreover, a representative was always present during the inspection as an interpreter. The Committee observes that, the abovementioned practices, such as the indirect payment of wages and confiscation of identification papers, could significantly increase the dependency of workers concerned on the controlling DPRK entity, which in turn contributes to their vulnerability. The Committee recalls the importance of taking effective

action to ensure that the system of the employment of migrant works does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment or indirect payment of wages, and deprivation of liberty. Such practices might cause their employment to be transformed into situations that amount to forced labour. *The Committee therefore requests the Government to strengthen its efforts to ensure that migrant workers, especially those from the DPRK, are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee also requests the Government to take the necessary measures to enable migrant workers to approach the competent authorities and seek redress in the event of a violation of their rights or abuses, without fear of retaliation. It further requests the Government to provide statistical information on the number of violations of the working conditions of migrant workers that have been recently detected and registered by the labour inspectors, and to indicate the penalties applied for such violations.*

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

## Rwanda

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(a) of the Convention.* Prison sentences involving compulsory labour imposed as a punishment for expressing political views. The Committee previously noted that, according to section 50(8) of Law No. 34/2010 of 12 November 2010 on the establishment, functioning and organization of Rwanda Correctional Service, an incarcerated person has the main obligation, inter alia, to perform activities for the development of the country, himself/herself and the prison. The Committee further took note of the Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association who conducted an official visit to Rwanda in January 2014 (A/HRC/26/29/Add.2). The Special Rapporteur noted with concern the Government's prevailing hostility towards peaceful initiatives by its critics and the existence of a legal framework that silences dissent. In this regard, the Special Rapporteur referred to several provisions of the Penal Code which provide for sanctions of imprisonment for persons expressing political views (sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code). Noting that any reference made to compulsory prison labour had been removed from the Penal Code, the Committee requested the Government to provide information on the measures taken in order to harmonize the Code of Penal Procedure with the Penal Code. The Committee also requested the Government to provide a copy of the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners.

The Committee notes the Government's information in its report that Law No. 30/2013 of 24 May 2013 relating to the Code of Penal Procedure has removed the reference to compulsory prison labour. However, the Committee notes that section 50(8) of Law No. 34/2010 remains valid, under which an incarcerated person can be obliged to work for the development of the country, himself/herself and the prison. The Government also considers sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code as compatible with the Convention without providing further explanation, and indicates that there are no court decisions in this regard. However, the Committee notes that the UN Human Rights Committee expressed its concern in its concluding observations on the fourth periodic report of Rwanda of 2 May 2016, at the prosecution of opposition politicians, journalists and human rights defenders as a means of discouraging them from freely expressing their opinions (CCPR/C/RWA/CO/4, paragraphs 39 and 40).

The Committee once again recalls that *Article 1(a)* of the Convention prohibits the use of compulsory labour, including compulsory prison labour, as a punishment for peacefully holding or expressing political views or views ideologically opposed to the established political, social or economic system. It once again draws the attention of the Government to the fact that the abovementioned sections of the Penal Code are worded in terms broad enough to lend themselves to the application as a means of punishment for peacefully expressing political views and, in so far as they are enforceable with sanctions of imprisonment which involve compulsory labour, they may fall within the scope of the Convention. The Committee further notes that the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners is not attached as indicated in the Government's report. *The Committee therefore requests the Government to ensure that no penal sanctions involving compulsory prison labour may be imposed on persons for peacefully expressing political views, for example, by amending section 50(8) of Law No. 34/2010 following the adoption of Law No. 30/2013. The Committee also requests the Government to provide information on the application of sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code in practice, including any legal proceedings defining or illustrating their scope. The Committee finally once again requests the Government to provide a copy of the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners.*

## Sierra Leone

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013. The Committee also notes that the Government had been requested to

provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 1(1) and 2(1) of the Convention. Compulsory agricultural work.* For many years, the Committee has been referring to section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on “natives”. On numerous occasions, the Government indicated that this legislation would be amended. The Government also indicated that section 8(h) of the Act was not applied in practice and, as it was not in conformity with article 9 of the Constitution, it was unenforceable.

The Committee notes the Government’s statement that, at the time of ratification, chiefs with administrative authority requested forced or communal labour from their communities, but that measures have been taken to address these occurrences, including through the establishment of the Human Rights Commission of Sierra Leone. Nonetheless, the Government states that, despite the prohibition on forced or compulsory labour, minor violations do occur. In this regard, the Government indicates that a report was filed with the Human Rights Commission relating to the undertaking of communal work by a village. ***Noting that the Government had previously indicated its intention to amend this Act, the Committee urges the Government to take the necessary measures to repeal section 8(h) of the Chiefdom Councils Act, to bring it into conformity with the Convention. It requests the Government to continue to provide information on the application of this Act in practice with regard to the exaction of compulsory labour, including information on the reports filed in this respect with the Human Rights Commission.***

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

## Sri Lanka

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Penalties and law enforcement.* The Committee previously noted the statement of the National Trade Union Federation (NTUF) that, while the Sri Lanka Bureau of Foreign Employment (SLBFE) is pursuing action to eradicate trafficking in persons, the penalties imposed on traffickers were not severe enough to serve as a deterrent. The Committee also noted the Government’s statement that, since 2009, the Criminal Investigations Department had commenced 61 investigations related to suspected cases of trafficking, which were still ongoing. The Women and Children’s Bureau of the Sri Lankan Police also carried out 38 investigations between March 2012 and April 2013. Moreover, the Attorney General’s Department had received 191 files of suspected cases of human trafficking since 2009, following which 65 indictments had been filed in court.

The Committee notes the Government’s information in its report that in October 2016, the police department established the “Anti-Human Trafficking Unit” with 13 police officers to investigate cases on human trafficking. A special unit has also been established under the SLBFE to investigate trafficking-related complaints reported to it. The Committee also notes that the Attorney General’s Department has forwarded a total number of 35 indictments to high courts in 2016, of which ten have been submitted to competent high courts for trafficking in persons under section 360C(1) of the Penal Code. Three of those were related to forced labour and seven were related to sexual exploitation. Additionally, the Attorney General has filed 25 indictments for procurement under section 360A of the Penal Code. The Government also indicates that 41 cases already filed are at different stages of trial in high courts across the country, of which at least 15 will be concluded by the end of 2017, as envisaged by the Attorney General’s Department. Approximately 61 suspects are being prosecuted during the reporting period. In 2016–17, the high courts have handed down six convictions of human trafficking, and the perpetrators have received penalties of imprisonment from six months to five years, along with fines of from 100,000 to 500,000 Sri Lankan rupees (LKR). The Government states that the main challenge to the suppress trafficking in persons is to obtain evidence from victims and to investigate cases where the credibility of the victim is in question. ***The Committee requests the Government to continue its efforts to ensure that persons who traffic in persons are subject to robust prosecutions and thorough investigations and that the penalties imposed on perpetrators are sufficiently effective and dissuasive. It also requests the Government to continue providing information on the application in practice of the relevant provisions of the Penal Code, including the number of investigations, prosecutions and convictions, as well as the specific penalties applied.***

*2. Victim protection.* The Committee previously noted that legal, medical and psychological assistance for trafficking victims was provided by the Government in collaboration with NGOs. The Ministry of Child Development and Women’s Affairs, under the direction of the task force functioning under the Ministry of Justice, had established a government-run shelter for victims of trafficking.

The Committee notes the Government’s information that it continues to provide legal, medical and psychological assistance for trafficking victims in the shelter maintained by the Ministry of Women and Child Affairs. Regarding the victims of trafficking for sexual exploitation, the Government indicates that the Attorney General’s Department has in several instances concluded that the vulnerability of women engaged in the sex industry had been exploited by the recruiter or facilitator to lure them into prostitution, which is one of the “means” defined by section 360C(1) of the Penal Code and used as the basis to identify the person concerned as a victim rather than a criminal. The Committee also notes from the Government’s report to the UN Committee on the Elimination of Discrimination against Women (CEDAW) of 2015 that the number of female victims of trafficking as reported by all police divisions was 29 out of 44 victims in total in 2011, two out of six in 2012, none in 2013 and four out of 12 in 2014 (CEDAW/C/LKA/8, paragraph 43). ***The Committee encourages the Government to continue taking measures to ensure that victims of trafficking are provided***

*with appropriate protection and services, and to provide information on the number of persons benefiting from these services.*

3. *Programme of action.* The Committee notes that the Government's written replies to the list of issues of the CEDAW of 2017 that the National Strategy Plan to Monitor and Combat Human Trafficking 2015-2019 has been adopted in February 2016. A high-level committee chaired by the Prime Minister and the National Anti-Trafficking Task Force monitor the implementation of the Strategic Plan (CEDAW/C/LKA/Q/8/Add.1, paragraphs 116–118). ***The Committee therefore requests the Government to provide information on the implementation of the Strategic Plan 2015-2019, including the activities carried out and the results achieved.***

*Articles 1(1) and 2(1). Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee previously noted that the Sri Lanka Bureau of Foreign Employment managed a transit shelter which provided medical assistance and accommodation to migrant workers referred upon their return by the Bureau's airport desk. It also noted that the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), in its concluding observations, noted the measures taken by the Government to safeguard the rights of migrant workers, including memoranda of understanding (MoU) and bilateral agreements with major labour-receiving countries, the compulsory registration scheme requiring registration prior to departure for foreign employment, the development of standard-approved contracts and minimum average salaries for migrant domestic workers, and the appointment of labour welfare officers abroad. However, the CMW also expressed concern at reports of abuse and ill-treatment of Sri Lankan migrant workers in host countries.

The Committee notes the Government's information that various measures have been taken to raise the awareness of migrant workers on their rights and obligations, such as the implementation of Safe Migration awareness programmes and the Comprehensive Information and Orientation Programmes. The Government indicates that the Ministry of Foreign Employment has signed 22 MoUs with major labour host countries on the protection of rights of migrant workers, which are reviewed annually by the Joint Technical Committees consisting of high-level representatives of both parties. The Government has also actively participated in regional consultation processes, such as the Colombo process and the Abu Dhabi Dialogue. The Committee also notes that consular assistance is provided through diplomatic missions in 16 major destination countries and 11 temporary shelters for female migrant workers as victims of abuse or exploitation. However, the Committee notes that, in its concluding observations of 2016, the CMW is concerned that Sri Lankan migrant workers continue to suffer numerous violations of their rights in host countries, including being deprived of the right to leave their place of work, non-payment of salaries, having their passports confiscated, harassment, violence, threats, inadequate living conditions, difficult access to health care and in some cases even torture (CMW/C/LKA/CO/2, paragraph 50). ***The Committee therefore requests the Government to continue its efforts to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. It also requests the Government to continue providing information on measures taken in this regard, including information on international cooperation efforts undertaken to support migrant workers in destination countries, and measures specifically tailored to the difficult circumstances faced by such workers to prevent and respond to cases of abuse.***

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

## Sudan

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1957)***

*Articles 1(1) and 2(1) of the Convention. Abolition of forced labour practices.* In its earlier comments, the Committee noted that in regions of the country where there was armed conflict, the abduction and forced labour of thousands of women and children had taken place. The Committee noted the allegations from the International Trade Union Confederation (ITUC) that there continued to be serious problems with regard to abductions for the purpose of forced labour, as well as compensation for victims of forced labour. The Committee also noted that in his 2013 report, the UN Independent Expert on the situation of human rights in the Sudan indicated that in the three areas of Abyei, South Kordofan and Blue Nile, outbreaks of fighting have led to widespread human rights violations and large-scale displacements. The Independent Expert pointed out that widespread human rights violations and large scale civilian displacements due to the persistence of fighting between the Sudanese Armed Forces (SAF) and armed opposition groups continued to occur in the region of Darfur (A/HRC/24/31, paragraphs 11 and 13). Moreover, the Committee noted the information from the Report of the Secretary-General on the African Union–United Nations Hybrid Operation in Darfur (UNAMID), of 14 October 2013, that between 1 April and 30 June 2013 there were 21 abductions in which the local civilian population was targeted, and ten such abductions between 1 July and 30 September 2013 (S/2013/607, paragraph 26). In this regard, the Committee requested the Government to take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations and impunity.

The Committee notes the Government's indication in its report that no evidence has been found regarding cases of abductions. However, the Committee notes from the 2016 report of the UN Independent Expert on the situation of human rights in the Sudan, that during the reporting period (from October 2015 to June 2016), the security situation in Darfur was marked by an escalation in fighting between Government forces and the Sudan Liberation Movement-Abdul Wahid. The

Independent Expert was concerned by the detrimental effects of the conflict on civilians in the light of allegations of human rights violations and serious violations of international humanitarian law, including indiscriminate killings, destruction and burning of villages, abduction of and sexual violence against women, as well as large-scale displacement of civilians. Moreover, during the first five months of 2016, around 80,000 people were reportedly newly displaced across Darfur. An additional 142,000 people were also reportedly displaced (A/HRC/33/65, paragraphs 41 and 42). ***In light of the above, the Committee urges the Government to take the necessary measures to put an immediate stop to cases of abductions for the exaction of forced labour and to guarantee that the victims are fully protected from such abusive practices. The Committee also reiterates the need for the Government to take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations and impunity, which would help to ensure the full observance of the Convention. Lastly, the Committee requests the Government to provide, in its next report, detailed information on measures taken in this regard.***

*Article 25. Penalties for the exaction of forced labour.* In its previous comments, the Committee noted that special courts were established in some conflict regions to eradicate any activity involving forced labour, and that a Special Prosecutor for Darfur crimes had been appointed. The Committee also noted that in his 2013 report, the Independent Expert raised concerns about the slow pace of prosecution of the Darfur conflict-related crimes (A/HRC/24/31, paragraph 43). The Committee requested the Government to indicate the number of prosecutions undertaken by the Special Prosecutor for Darfur which relate to abductions for the exaction of forced labour, as well as the number of convictions and the nature of penalties applied.

The Committee notes the Government's indication that with regard to the statistical information on the number of prosecutions undertaken by the Special Prosecutor for Darfur, none of the prosecutions were related to cases of abductions for forced labour. The Government also indicates that various institutions currently exist to facilitate access to justice to victims of human rights violations, including the National Human Right Commission and the High Council for Children. ***Recalling the importance of imposing appropriate criminal penalties on perpetrators so that recourse to forced labour practices does not go unpunished, the Committee requests the Government to take immediate and effective measures in this regard. The Committee also requests the Government to provide statistical information on the number of prosecutions undertaken by the Special Prosecutor for Darfur which relate to abductions for the exaction of forced labour, as well as the number of convictions and the specific penalties applied.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1970)**

*Article 1(a) of the Convention. Punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* In its earlier comments, the Committee noted that penalties of imprisonment (involving an obligation to perform prison labour) could be imposed by virtue of sections 50, 66 and 69 of the Criminal Act (committing an act with the intention of destabilizing the constitutional system, publication of false news with the intention of harming the prestige of the State and committing an act intended to disturb public peace and tranquility). The Committee also noted that the 2013 report of the United Nations Independent Expert on the situation of human rights in the Sudan indicated that parts of the national legal framework, including the Criminal Act, infringe fundamental human rights and freedoms, and that restrictions on civil and political rights and the curtailment of freedom of expression and the press persist (A/HRC/24/31, paragraph 13). According to the Independent Expert, a committee had been set up to study the reform of some laws, including the Criminal Procedure Act and the Criminal Act. This Committee had submitted its recommendations to the Government for consideration (paragraph 18). The Committee had requested the Government to take the necessary measures to ensure that sections 50, 66 and 69 of the Criminal Code are repealed or amended.

The Committee notes the Government's indication in its report that the right to freedom of peaceful assembly and freedom of expression and peaceful protest are universally guaranteed rights, but their exercise is subject to restrictions in accordance with the national legislation and the obligations of the State under international human rights Conventions. Nevertheless, the Committee notes that in its 2014 concluding observations, the UN Human Rights Committee (HRC) was concerned by the numerous allegations indicating that State officials have curtailed the full and effective enjoyment of the right to freedom of expression by, inter alia, closing newspapers without court orders, confiscating entire newspaper editions and subjecting journalists to intimidation and harassment. The HRC was also concerned about the obligations placed on journalists by the 2009 Press and Publication Act and about prosecutions for disseminating "false news". Lastly, the HRC was also concerned at allegations indicating that State Officials have subjected opponents and perceived opponents of the Government, human rights defenders and other activists to harassment, intimidations, arbitrary arrest and detention, and torture and ill treatment (CCPR/C/SDN/CO/4, paragraph 21).

In addition, the Committee notes that in his 2016 report, the Independent Expert on the situation of human rights in the Sudan highlighted that the National Security Act and the Criminal Act of 1991, and parallel legislation specific to Darfur, such as the emergency laws, continue to infringe on fundamental rights and freedoms. Moreover, restrictions on civil and political rights and the curtailment of the rights to freedom of expression, association and peaceful assembly, as well as freedom of the press have persisted. Increasing demands by political opposition groups, civil society organizations and students for democratic reforms have been met with repressive measures by the Sudanese authorities, including arrests

and detention. Human rights defenders, political opponents and journalists continue to be targeted and impunity remains a recurring problem (A/HRC/33/65, paragraph 63).

The Committee once again recalls that *Article 1(a)* of the Convention prohibits all recourse to compulsory labour, including compulsory prison labour, as a means of political coercion or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are protected by the Convention, as long as they do not resort to or call for violent means to these ends. ***Therefore, the Committee once again urges the Government to take the necessary measures to ensure that sections 50, 66 and 69 of the Criminal Act are repealed or amended so that no prison sentence (involving compulsory labour) can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on the progress made in this regard. Pending the adoption of such amendments, the Committee requests the Government to provide information on the application of sections 50, 66 and 69 of the Criminal Act in practice. Lastly, the Committee once again requests the Government to provide copies of the amendments to the Criminal Procedures Act of 20 May 2009, as well as a copy of the 2009 Press and Publication Act.***

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

## Syrian Arab Republic

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1), 2(1) and 25 of the Convention. Situations of forced labour arising from the armed conflict. Trafficking in persons and sexual slavery.* Following its previous comments, the Committee notes that according to the 2016 Report of the UN Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic to the Human Rights Council, credible information indicates that women and girls trapped in conflict areas under the control of the Islamic State in Iraq and the Levant (ISIL) face trafficking and sexual slavery. Some specific ethnic groups are particularly vulnerable, such as Yazidis and those from ethnic and religious communities targeted by the ISIL (A/HRC/32/35/Add.2, paragraph 65). The Committee also notes that, according to the 2017 Report of the UN Secretary-General on conflict-related sexual violence, thousands of Yazidi women and girls who were captured in Iraq in August 2014 and trafficked to the Syrian Arab Republic continue to be held in sexual slavery, while new reports have surfaced of additional women and children being forcibly transferred from Iraq to the Syrian Arab Republic since the start of military operations in Mosul (S/2017/249, paragraph 69).

The Committee notes the Government's indication in its report that, pursuant to the Prevention of Human Trafficking Act of 2010, a Department to Combat Trafficking in Persons was established. However, since the conflict has erupted, trafficking of persons and sexual slavery have increased because of the presence of terrorist groups in the country. The Committee must express its ***deep concern*** that, after almost six years of conflict, trafficking in persons and sexual slavery are practices that are still occurring on a large scale on the ground. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee once again urges the Government to take the necessary measures to put an immediate stop to these practices which constitute a serious violation of the Convention and to guarantee that the victims are fully protected from such abusive practices. The Committee recalls that it is crucial that appropriate criminal penalties are imposed on perpetrators so that recourse to trafficking or sexual slavery does not go unpunished. The Committee urges the Government to take immediate and effective measures in this respect, and to provide information on the results achieved.***

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* For a number of years, the Committee has been drawing the Government's attention to certain provisions under which penal sanctions involving compulsory prison labour, pursuant to sections 46 and 51 of the Penal Code (Act No. 148 of 1949), may be imposed in situations covered by the Convention, namely:

- Penal Code: section 282 (insult of a foreign State); 287 (exaggerated news tending to harm the prestige of the State); 288 (participation in a political or social association of an international character without permission); and sections 335 and 336 (seditious assembly, and meetings liable to disturb public tranquility); and
- the Press Act No. 156 of 1960: sections 15, 16 and 55 (publishing a newspaper for which an authorization has not been granted by the Council of Ministers).

The Committee also previously noted that the abovementioned provisions are enforceable with sanctions of imprisonment for a term of up to one year which involves an obligation to perform labour in prison.

The Committee notes the Government's indication in its report that the Press Act of 1960 had been repealed and replaced by the Media Act No. 108 of 2011, under which the penalty of imprisonment has been replaced by a fine. The Government also indicates that a draft Penal Code has been prepared and is in the process of being adopted. ***The Committee expresses the firm hope that, during the process of the adoption of the new Penal Code, the Government will take all the necessary measures to ensure that persons who express political views or views opposed to the established political, social or economic system benefit from the protection afforded by the Convention and that, in any event, penal sanctions involving compulsory prison labour cannot be imposed on them.***

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

## United Republic of Tanzania

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1962)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Penalties and law enforcement.* The Committee previously noted the adoption of the Anti-Trafficking in Persons Act (No. 6 of 2008). Pursuant to section 4 of the Act, trafficking in persons is an offence, punishable with a fine of between 5 million Tanzanian shillings (TZS) and TZS100 million (approximately US\$3,172–\$63,577), or to imprisonment for a term of not less than two years and not more than ten years, or both. Pursuant to section 5 of the Act, a person who promotes, procures or facilitates the commission of trafficking in persons commits an offence, and is liable to a fine of between TZS2 million and TZS50 million (approximately \$1,272–\$31,083), or to imprisonment for a term of not less than one year, but not more than seven years, or both. The Government stated that training on human trafficking was conducted for officers of command districts as well as criminal investigation officers responsible for human trafficking. The Committee therefore requested the Government to provide information on the application of the Act in practice.

The Committee notes the Government's information in its report that, in 2016, around 100 human trafficking cases were investigated, of which 23 offenders were prosecuted in the courts of law, and 19 traffickers were convicted. Among them, one perpetrator was sentenced to ten years' imprisonment, two to seven years' imprisonment and three to five years' imprisonment. However, the Committee notes that, according to the Government's replies to the list of issues of the UN Committee on the Elimination of Discrimination against Women (CEDAW), in February 2015, an Indian man involved in the trafficking of eight Nepalese girls was convicted and sentenced to ten years' imprisonment or to pay a fine of TZS15 million. The perpetrator paid the fine and was released (CEDAW/C/TZA/Q/7-8/Add.1, paragraph 84). Referring to paragraph 319 of the 2012 General Survey on the fundamental Conventions, the Committee recalls that, when the sanction consists only of a fine or a very short prison sentence, it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to be dissuasive. The Committee also notes that, in its concluding observations of 2016, the CEDAW expressed its concern at the persistence of trafficking in, and sexual exploitation of, women and girls in the country and reports of trafficking in girls for domestic work and sexual exploitation (CEDAW/C/TZA/CO/7-8, paragraph 24). ***The Committee therefore requests the Government to take the necessary measures to ensure that the Anti-Trafficking in Persons Act is applied so that sufficiently effective and dissuasive penalties of imprisonment are imposed and enforced in practice in all cases. The Committee also requests the Government to continue providing information on the application of the Anti-Trafficking in Persons Act, including the number of investigations and prosecutions, as well as the penalties applied.***

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

## Thailand

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1969)**

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017.

#### **Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)**

*Articles 1(1), 2(1) and 25 of the Convention.*

##### **I. Vulnerability of migrant workers in the fishing sector to practices of forced labour and trafficking in persons**

The Committee notes that, at its 329th Session (March 2017), the Governing Body approved the report of the tripartite committee that was set up to examine the representation made by the ITUC and the International Transport Workers' Federation (ITF) alleging non-observance of the Convention by Thailand.

The Committee notes that the representation raised two major sets of allegations with regard to compliance with the Convention. The first concerns the situation of workers on board Thai fishing vessels, particularly migrant workers, who are allegedly exposed to forced labour and trafficking. The second concerns the responsibility of the State to ensure that the prohibition of forced labour is strictly enforced by effective and adequate penal sanctions. The Committee also notes

that the tripartite committee examined allegations raised by the ITUC and the Government's explanations on the measures taken to combat forced labour and trafficking in the fishing sector, particularly with regard to: (a) recruitment practices; and (b) employment practices.

### (a) *Recruitment practices*

The Committee notes that the tripartite committee examined several issues related to: (i) brokers and recruitment fees; (ii) the issue of contract substitution; and (iii) the issue of corruption and trafficking in persons.

(i) *Brokers and recruitment fees.* The Committee observes that the tripartite committee found that while the Recruitment and Job-Seekers Protection Act (1985) is the main piece of legislation that regulates the recruitment practices of private employment agencies, the 1985 Act does not contain specific provisions related to the protection of migrant workers during the recruitment process, and does not stipulate procedures for regulating brokers, subcontracting agencies or manning agencies supplying migrant workers; nor does it regulate the payment of recruitment fees by workers. The tripartite committee took note of the Government's indication that a new Royal Ordinance concerning Migrant Workers Recruitment is to be adopted to ensure better prevention of the illegal recruitment of migrant workers.

The Committee notes with *interest* the adoption of the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (23 July 2017) (Royal Ordinance B.E. 2560). According to the Government, this Ordinance has three main objectives: harsher penalties for offenders; clearer responsibilities of employers and licensed recruitment agencies; and the possibility for NGOs to use the Foreign Worker's Management Fund for assisting and protecting workers from being exploited. Moreover, under the 2015 Royal Ordinance on the Application for Work Permit B.E. 2559, recruiting migrant workers without a work permit is an offence punishable by a prison term of up to three years or a fine of 200,000 to 600,000 Thai baht (THB) (US\$6,000 to US\$18,000).

The Committee further notes that the ITUC asserts in its observations that in January 2016, Greenpeace had reported that some migrant and Thai workers in certain fishing vessels had paid recruitment fees of up to \$742 to brokers. In addition, they had reported not receiving any information regarding working conditions, payment of wages or the length of time at sea prior to getting on board the vessels. The payment system consists of salary advances sent home in undocumented transfers via brokers and lump sums promised to workers after completing their work at sea.

The Committee notes the Government's indication in its report that it has prohibited the imposition of recruitment fees on migrant workers, except for certain costs such as the cost of preparing documents and transportation expenses (section 42 of the Notification of the Department of Employment on the Identification of List of Foreign Workers and the Rate of Service Fee and Cost Fee and Cost Form in bringing in Foreign Workers to work with Employers in the Kingdom, dated 14 November 2016). In case of violations, the employer is liable to six to 12 months' imprisonment.

The Committee also notes the Government's indication that it has been working closely with countries of origin (Myanmar, Cambodia, and Lao People's Democratic Republic) via regular consultations and bilateral meetings to develop memoranda of understanding (MOUs) for fair recruitment practices. For example, it has agreed with the Cambodian Government to recruit Cambodian workers in the fishing sector through the Government to Government (G to G) Pilot project, according to which the Thai Government has agreed to guarantee a minimum salary of THB12,000 per month, payment of wages by bank transfer, appropriate accommodation and food, as well as health insurance and accident coverage. The International Organization for Migration (IOM) is also collaborating in the G to G Pilot project. Moreover, there is a mutual agreement to establish a Cambodian migration centre by the end of 2017. The centre will be responsible for pre-departure training, facilitating required legal documentation for migrant workers, as well as assisting the victims of forced labour or trafficking. ***The Committee requests the Government to continue to strengthen its efforts to ensure that migrant workers in the fishing sector are not exposed to practices that would increase their vulnerability to forced labour, in particular in matters related to the payment of recruitment fees and the recruitment by illegal brokers. It also requests the Government to provide further information on the application in practice of the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (2017), indicating the number and nature of violations detected and the penalties imposed for cases of violations.***

(ii) *Contract substitution.* The Committee notes that the tripartite committee observed that migrant workers were still confronted with the practice of contract substitution. The Committee notes the Government's indication that it is compulsory to sign a formal contract between the employer and the worker (sections 14/1 and 17 of the Labour Protection Act B.E. 2541 (1998) and section 6 of the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)) and that the employment contract has to be signed in two copies so that the worker keeps a copy. Under the agreed MOUs with source countries, there is a standard type of contract which is approved by the Department of Labour Protection and Welfare (DLPW). Such contracts must be in both the Thai language and the language of the migrant worker (now available in Khmer, Burmese, Laotian and English). The signed contract should stipulate the amount of the monthly payment of wages via bank transfer and the transfer fee that is borne by the employer. This contract should be vetted by one labour inspector from the Ministry of Labour (MOL).

Moreover, under the Fishery Law B.E. 2560 of 2017 an identification document (known as a Seabook) has to be issued for any migrant worker in the fisheries sector when the owner of a fishing vessel has signed the DLPW's standard contract with a worker. As of June 2017, the Department of Fishery had issued 50,033 Seabooks to migrant workers, among them 30,661 from Myanmar, 18,050 from Cambodia, 1,201 from Lao People's Democratic Republic, 31 from

Viet Nam, and 90 for stateless persons. The employment of a worker on a fishing vessel without an identification document, or without a licence shall be subject to a fine (THB400,000 (\$12,000)). ***The Committee requests the Government to continue to strengthen its efforts to ensure that, in practice, labour contract substitution is effectively prohibited. In this regard, it encourages the Government to ensure that the competent authorities register and verify that the signed contract corresponds to the original offer of employment consented to by the worker. Lastly, the Committee requests the Government to continue providing statistical information on the number of migrant fisher workers who have been issued with Seabooks documents as well as the number of infringements registered in this respect.***

(iii) *Corruption and trafficking in persons.* The Committee notes that the tripartite committee considered that corruption of government officials can create an environment of impunity that exacerbates the situation of vulnerability of migrant fishers and constitutes a major obstacle in the identification of victims of forced labour and trafficked victims.

The Committee also notes that in its observations the ITUC asserts that, in 2016, the Criminal Court Division for Human Trafficking in Bangkok found 62 persons guilty of trafficking in persons, including several high-ranking officials who were sentenced to life imprisonment. The ITUC adds that, often, police officers or high-ranking government officials threaten witnesses, interpreters or other police officers.

The Committee takes note of the statistics provided by the Government according to which, from 2014 to 2017, there were 12 cases and 53 government officials who had been investigated of being involved in trafficking of migrant workers in the fishing sector. In 2017, ten police officers were under investigation by the Public Sector Anti-Corruption Commission. In 2016, the Anti-Money Laundering Office (AMLO) reported nine cases of trafficking in persons (forced labour and trafficking for sexual exploitation cases) for which assets were seized from the perpetrators.

It is reported by the Government that one of the major challenges faced by the multidisciplinary inspection teams on fishing vessels during the process of victims' identification is the provision of shelters for victims or witnesses. Providing shelters for victims of trafficking is the responsibility of the Ministry of Social Development and Human Security (MSDHS). The Royal Thai Police also has the responsibility for providing accommodation and protection for persons whose trial is under way. In addition to the development of the Vessel Monitoring System (VMS), the Command Centre for Combating Illegal Fishing (CCCIF) has established the Electronics Monitoring Messaging and Electronics Reporting System (EM and ERS) which would enhance the capability to control illegal transshipment at seas, and help in detecting cases of trafficking in persons. ***The Committee requests the Government to continue to take proactive measures to ensure that government officials complicit with human traffickers are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice for violation of the legislation. The Committee encourages the Government to continue to provide appropriate training to law enforcement bodies in order to improve their capacity to identify cases of trafficking in persons.***

## **(b) Employment practices**

(i) *Confiscation of seafarers' identity documents (SIDs).* The Committee notes that the tripartite committee highlighted that the confiscation of SIDs is a serious problem in the Thai fishing industry and that there was no specific prohibition in the legislation for such an offence.

The Committee further notes that the ITUC asserts in its observations that national courts and public authorities, such as the National Human Rights Commission of Thailand fail to recognize that the confiscation of SIDs could expose workers to exploitation and believe that confiscation of identity documents (IDs) does not necessarily imply coercion to work. Instead, judicial authorities believe that the confiscation of IDs is justified because it makes the inspection of documents easier.

The Committee notes that under section 131 of the Royal Ordinance B.E. 2560 of 2017, the confiscation of IDs is now punishable with imprisonment of up to six months or a fine. Section 68 also stipulates that the work permit should always be kept with the migrant worker during his/her work. According to the Government, the establishment of 32 Port in-Port Out (PIPO) Controlling Centres at the 22 coastal provinces has increased efficiency and effectiveness of law enforcement. During the period 1–31 August 2017, 412 fishing vessels and 4,995 fishers (1,490 Thai, 1,836 Burmese, 1,633 Cambodians and 36 Laotians) were inspected. There was no confiscation of SIDs or Seabooks, no complaint regarding non-payment of wages, and no forced labour or trafficking cases. The Committee recalls that the practice of confiscation of SIDs is a serious problem that may increase migrant fisher workers' vulnerability to abuse, by leaving them undocumented, reducing their freedom of movement and preventing them from leaving an employment relationship. ***In this regard, the Committee requests the Government to strengthen its efforts to ensure that the Royal Ordinance B.E. 2560 of 2017 is effectively implemented, and that sufficiently dissuasive penalties for confiscation of SIDs are imposed on employers who are in breach of the legislation.***

(ii) *Withholding of wages.* The Committee observes that the tripartite committee encouraged the Government to continue to strengthen its efforts to address the non-payment of wages, and ensure the effective application of the 2014 Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014). The Committee notes the ITUC's assertions in its observations that withholding of wages continues to be a common practice in Thailand, and that weak labour law enforcement and access to justice lead to the lack of guarantee of the payment of wages.

The Committee notes that the Government refers to section 8 of the 2014 Ministerial Regulation B.E. 2557 in which the employer has the obligation to prepare a salary statement including paid leave in the Thai language. Section 11 clearly prohibits the employer from withholding wages. If an employer intentionally refrains from the payment of the salary seven days beyond the agreed initial date of payment, he/she is required to pay an additional amount of 15 per cent of the amount withheld. In May 2015, the DLPW in cooperation with the multidisciplinary inspection teams on fishing vessels and officials from the Myanmar Embassy assisted 13 workers of a fishing vessel from Myanmar to recover their back wages. Moreover, in 2017, the DLPW helped a worker from Myanmar, aged 17, to receive 20 days of unpaid salary; the owner of the vessel was charged for employing a minor and trafficking in persons. ***The Committee requests the Government to ensure that the 2014 Ministerial Regulation B.E. 2557 is effectively implemented, so that all wages are paid on time and in full, and that deterrent penalties for non-payment of wages are imposed.***

(iii) *Physical abuse.* The Committee notes that the tripartite committee emphasized the vulnerable situation of fisher workers who may face physical violence that could in certain cases amount to murder. The Committee notes that in its observations, the ITUC provides several examples of fisher workers having been physically abused. For instance, in January 2016, six Cambodian and Thai fishers, crew members of two Thai vessels died and 32 others suffered from health complications. Survivors reported that they were deprived of food for several days, and had to work for up to three days without a break.

The Committee notes the Government's explanation that the amendment of the Anti-Trafficking Act No. 2 B.E. 2558 of 2015 increased the penalty to 20 years' imprisonment if the offence causes the victim(s) serious injuries, and life imprisonment or death penalty if the offence causes the victim(s) death. The amendment of the Anti-Trafficking Act No. 3 B.E. 2560 of 2017 provides for more explicit provisions, including: (i) the revision of the definition of "exploitation" to cover slavery; and (ii) the revision of the definition of "forced labour or forced service" to cover confiscation of IDs and debt bondage.

While noting the legislative measures taken by the Government, the Committee expresses its ***deep concern*** about cases of fisher workers who have been victims of physical abuses or injuries and, in some cases, who have also been victims of death. Recalling the particular nature of the work of fisher workers, due in part to their isolated situation at sea, the Committee underlines the importance of taking effective measures to ensure that this category of workers is not placed in a situation of increased vulnerability, especially when they are subjected to physical violence. ***Accordingly, the Committee urges the Government to take the necessary measures to ensure that the Anti-Trafficking Act, as amended, is effectively implemented, and regularly monitored by the law enforcement bodies, to investigate cases of physical abuse. It also requests the Government to take the necessary measures to ensure that the appropriate sanctions are imposed on employers who are in breach of the legislation.***

## *II. Law enforcement and access to justice*

The Committee notes that the tripartite committee pointed out that the prohibition of forced labour requires that the penalties imposed by law are adequate, commensurate with the offence and strictly enforced. To this end, the tripartite committee highlighted the importance of: (a) strengthening the labour inspectorate body; and (b) providing access to justice and protection to the victims.

### ***(a) Labour inspection and the application of penal sanctions***

The Committee notes that the tripartite committee found that the Government had established multidisciplinary inspection teams on fishing vessels that have the mandate to interview workers with a view to preventing them from becoming victims of debt bondage and human trafficking in the fisheries sector.

The Committee notes the Government's statement that there are currently 1,506 labour inspectors. This number has increased by 29.71 per cent since the last report was submitted on the application of the Convention. The Committee takes due note of the statistics provided by the Government on a series of training courses that were provided to labour inspectors, including: (i) 28 government officials were trained in May 2017 by the Ship to Shore Rights Project on forced labour indicators, interview techniques, issues of debt bondage, confiscation of ID documents, and the Anti-Trafficking Act; (ii) 80 officials at management level were trained in June 2017 by the Department of Employment (DOE) on investigation techniques and prosecution of traffickers in persons; (iii) in September 2017, senior officials from the MOL, MSDHS, DOE; Marine Police and the Royal Thai Navy were given training on how to interview workers in the fishing sector.

The Committee also notes that a certain number of language coordinators have been employed to facilitate the communication between migrant workers and government officials (Announcement of Office of the Prime Minister of November 2016). Some 70 language coordinators were appointed to work at 22 DLPW provincial offices and in 32 PIPO Controlling Centres, and ten language coordinators were working in the Migrant Workers Assistance Centre in ten provinces.

The Committee takes note of the number of inspections carried on board at sea between 2015 and 2017. It notes that, in 2016, 1,859 migrant workers, including 1,675 from Myanmar, 81 from Lao People's Democratic Republic, and 103 from Cambodia received their entitlements. The Committee also notes that Order No. 22/2017 on the implementation to combat Illegal, Unreported and Unregulated fishing (IUU) (4th supplement) came into force in April 2017. Under the Order, any authorized official who detects unlawful practices under fishery laws, shall have the right to detain the vessel

and report it to the Marine Department within 24 hours. Between April and June 2017, 135 fishing vessels were detained as a result of the implementation of Order No.22/2017.

According to the Government, there were 319 cases of trafficking in persons that were detected and investigated in 2016 in the fishing sector, including 244 cases of sexual exploitation, 32 cases of employment-related issues, and 43 cases of trafficked workers in the fishing sector. In 2016, 600 offenders were arrested and charged under the Anti-Trafficking Act, and 268 were convicted and sentenced to a range of two to ten years' imprisonment. As of September 2017, there were 85 cases under consideration by the Public Prosecutor, and 13 cases were under consideration by the courts. ***The Committee encourages the Government to continue to take measures to strengthen the capacity of the labour inspectors in detecting forced labour practices and trafficking of persons, and to continue to provide statistical information on the number of cases of forced labour or trafficking concerning migrant fisher workers that have been recently registered by the labour inspectors, as well as the number and nature of the penalties imposed.***

#### **(b) Access to justice and assistance to victims**

The Committee notes that the tripartite committee observed that, while the legislation provides for the establishment of different complaints mechanisms, there exist some obstacles to their effective use by workers, such as the duration of the complaints procedure, language barriers and the lack of information on preventive measures with regard to re-trafficking.

The Committee notes the Government's statement that there are special centres to assist migrant workers (Cabinet resolution of July 2016). With regard to migrant fishing workers, the Committee notes that, a number of centres, have been established, such as the Fishing Worker Coordinator Centres and the Fisherman's Life Enhancement Centre (FLEC). In 2016, these centres provided assistance to 15 Cambodian working in the fishing sector. They are tasked with, among other things: (i) promoting employment in the fishing sector in line with the legislation; (ii) providing protection and legal assistance to migrant fishing workers; and (iii) raising awareness of the owners of fishing businesses and other relevant stakeholders to improve collaboration in combating trafficking in persons in the fishery sector. The Committee further takes due note of the statistics communicated by the Government regarding the types of assistance provided to migrant fisher workers. It observes that 15,370 migrant workers have been transferred to other employers; 241 have received their unpaid wages; and 372 have been transferred to related organizations for assistance. In addition, the Government refers to the establishment of 24-hour assistance channels that are accessible to migrant workers in their own languages, as well as the Complaint System for Foreign Workers which operates through the Internet. The Committee also takes note of the statistics communicated by the Government on the number of victims of trafficking in persons who had benefited from such assistance. For instance, between January and July 2017, the MSDHS provided assistance to 224 victims of trafficking in persons, including 78 workers who were victims of forced labour in the fishing vessels. The Committee further takes note of the Government's indication that a certain number of MOUs have been signed to tackle trafficking in persons with source countries, such as Lao People's Democratic Republic, Myanmar and Viet Nam. In June 2017, the Thai Government and the Myanmar Government signed an agreement on the implementation procedure of repatriation and reintegration of victims under the concept of safe repatriation, safe receiving and no re-trafficking; the implementation procedure contains the standard process of repatriation and reintegration, including better data collection systems and clear guidelines. In 2016, the Government conducted safe repatriation for 243 victims in close coordination with source countries. ***The Committee encourages the Government to continue to take measures to ensure improved protection and assistance to migrant fisher workers, so that they do not fall into situations of forced labour or trafficking in persons. The Committee also requests the Government to provide statistical information on the number of migrant fisher workers who had recourse to legal assistance from the abovementioned assistance centres. Finally, the Committee requests the Government to provide information on the number of migrant fisher workers who have lodged a complaint via the Complaint System for Foreign Workers operating through the Internet.***

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

#### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views.* Over a number of years, the Committee has been drawing the Government's attention to section 112 of the Criminal Code under which whoever defames, insults or threatens the king, the queen, the heir apparent or the regent, shall be punished with imprisonment of three to 15 years, as well as sections 14 and 15 of the Computer Crimes Act of 2007 that prohibit the use of a computer to commit an offence under the provisions of the Criminal Code concerning national security (including section 112 of the Criminal Code), with a possible sanction of five years' imprisonment. The Committee noted that under the Penitentiary Act B.E. 2479 (1936), penalties of imprisonment involve an obligation to perform prison labour. It also observed that, according to the report of the United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, there had been a recent increase in lèse-majesté cases pursued by the police and the courts.

The Committee notes the Government's indication in its report that, as for the recent increase in lèse-majesté cases according to the UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, proceedings on lèse-majesté cases are conducted with due legal process. The enforcement of section 112 does not contravene international laws on human rights. The existence of lèse-majesté is appropriate for protecting the Thai

monarchy as a force for unity and the stability of the nation. Those convicted for lèse-majesté are entitled to the same rights as those convicted for other criminal offences.

The Committee observes, in this regard, that in its 2017 Concluding observations the UN Human Rights Committee (HRC) was concerned that criticism and dissension regarding the royal family is punishable with a sentence of three to 15 years' imprisonment, about reports of a sharp increase in the number of people detained and prosecuted for the crime of lèse-majesté since the military coup and about extreme sentencing practices, which result in dozens of years of imprisonment in some cases (CCPR/C/THA/CO/2, paragraph 37).

In addition, the Committee notes the Government's indication that sections 14 and 15 of the Computer Crimes Act of 2007 are drafted and implemented to curtail illegal activities and dissemination of false information, and to address the risk of exploiting an instantaneous connection for harassment and defaming other individuals. Moreover, there is no part in the legislation that allow compulsory labour as a specific form of punishment for convicted prisoners charged under section 112 of the Criminal Code and sections 14 and 15 of the Computer Crimes Act. The Committee, however, observes that, in its concluding observations, the HRC expressed its concern about reports of the severe and arbitrary restrictions imposed on the right to freedom of opinion and expression in the state party's legislation, including in the Criminal Code and the Computer Crimes Act. The HRC was also concerned about criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals under the abovementioned legislation, and about reports of the suppression of debate and campaigning, and criminal charges against individuals during the run-up to the constitutional referendum in 2016. The Committee finally notes that the HRC recommended that the Government consider decriminalizing defamation and, in any case, countenance the application of criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation (paragraphs 35 and 36).

The Committee further notes with *deep concern* that the penalties of imprisonment involving compulsory prison labour, contained in the Penitentiary Act of 1936, are retained under the 2017 amendments to the same Act.

In this regard, the Committee is bound to recall that *Article 1(a)* of the Convention prohibits all recourse to penal sanctions involving an obligation to perform labour, as a means of political coercion or as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to, or call for, violent means to these ends (see General Survey of 2012 on the fundamental Conventions, paragraph 302). *In light of the above considerations, the Committee urges the Government to take all necessary measures, in both law and practice, to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views opposed to the established system, for example, by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect.*

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

## Turkey

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1998)**

The Committee notes the observations of the Turkish Confederation of Employers' Associations (TİSK) received on 8 August 2016.

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Law enforcement measures.* The Committee previously noted the information from the International Trade Union Confederation (ITUC) that most of the trafficking cases occurring in the country related to prostitution of women from Eastern Europe and forced labour of persons from Central Asia. The Committee also noted the indication of TİSK that progress had been achieved with regard to bring traffickers to court and reducing the acquittal rate. The Committee also noted the Government's information regarding the application of section 227(3) of the Penal Code (prohibiting sending a person in or out of the country for the purpose of prostitution) that out of the 177 decisions handed down in 2011 and 2012, 23 persons were convicted. The Government also indicated that from the 166 cases concluded under section 80 of the Penal Code (on human trafficking) in 2011 and 2012, involving 912 suspects, 70 persons were sentenced to imprisonment. The Committee further noted that the UN Human Rights Committee expressed its concern that only a few cases of human trafficking had resulted in investigations, prosecution and sentences.

The Committee notes the statement in the communication of TİSK that the Government has ratified the Council of Europe Convention on Action against Trafficking in Human Beings in 2016. TİSK also indicates that Turkey has signed cooperation protocols in the field of combatting human trafficking with Belarus, Georgia, Kyrgyzstan, the Republic of Moldova and Ukraine.

The Committee notes the Government information in its report that under section 80 of the Penal Code, in 2013, out of 564 suspects involved in 126 adjudicated cases, 331 were acquitted; in 2014, out of 394 suspects involved in

91 adjudicated cases, 292 were acquitted; in 2015, out of 514 suspects involved in 119 adjudicated cases, 330 were acquitted; and in the first quarter of 2016, out of 148 suspects involved in 28 adjudicated cases, 118 were acquitted. The Committee further notes that, pursuant to section 227(3) of the Penal Code, in 2014, there were ten convictions out of 52 court decisions given; while in 2013, there were only three convictions out of 18 court decisions given. The Government also indicates that, the Turkish National Police (Directorate General of Security) and the General Command of Gendarmerie have both set up in their organizational structure a special department to “combat migrant smuggling and human trafficking”, and that this subject is included in the training programs of their recruits and personnel. The Committee further notes that the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) expresses its concern at the limited capacity and inter-institutional coordination of anti-trafficking efforts in its concluding observations of 31 May 2016 (CMW/C/TUR/CO/1, paragraph 83). The Committee notes with **concern** the low number of convictions regarding trafficking in persons, despite the significant number of cases brought to justice. **The Committee accordingly urges the Government to strengthen its efforts to ensure that all persons who engage in trafficking are subject to prosecution and that in practice, sufficiently effective and dissuasive penalties of imprisonment are imposed. The Committee further requests the Government to continue providing information on measures taken in this regard, including training and capacity building of law enforcement authorities, as well as on the results achieved. It also requests the Government to continue providing information on the number of prosecutions, convictions and specific penalties applied pursuant to sections 80 and 227(3) of the Penal Code.**

2. *Protection and assistance for victims.* The Committee previously noted the information from the ITUC that law enforcement officials make insufficient use of trafficking victim identification procedures and that many such victims are detained and deported. The ITUC also indicated that the Government does not operate any victim shelters and does not provide adequate resources to non-governmental centres that offer assistance and services. The Committee also noted the statement in the communication of TISK that the Government had adopted a victims-focused approach to addressing trafficking by taking legislative and administrative measures to combat this crime. TISK indicated that shelters for human trafficking victims were operating in Ankara and Istanbul, as well as a hostel for this purpose in Antalya. In this regard, the Committee noted the Government’s statement that the Ministry of Foreign Affairs had provided funding to these shelters for the period of 2014–16. The Government also stated that victims of human trafficking were provided with humanitarian visas for a period of six months. The safe and voluntary return of victims was ensured through cooperation between the police, the International Organization for Migration, liaison agencies in countries of origin and non-governmental organizations.

The Committee notes the statement in the communication of TISK that joint operations are held in the framework of cooperation between the Ministry of Interior and countries that are source countries for human trafficking. TISK also indicates that bilateral cooperation protocols have been signed by the Directorate General for Security in the Ministry of Interior with civil society organizations regarding the identification of victims and the follow-up process.

The Committee notes the Government’s information that, victim identification procedures are systematized anew with the enactment of the Law on Foreigners and International Protection (No. 6458) 2013. Moreover, the Regulation of Combatting Human Trafficking and Protection of Victims was adopted in 2016, setting forth the procedures and principles for the prevention of human trafficking and protection of victims regardless of their nationality. Accordingly, foreign victims are provided with residence permits for a duration of six months, extendable up to three years, and those who wish to leave Turkey are repatriated to their country of origin or to a safe third country under the “Voluntary and Safe Return Programme”. Victims are also provided supporting services through “Victim Support Programmes”, including the provision of shelter homes or safe houses, health services, psychosocial help and legal assistance, among others. The Committee also notes that, a committee on the coordination of combatting human trafficking and affiliated provincial committees are monitoring mechanisms under the Regulation 2016. The Committee further notes that, 102 victims were identified from 1 January to 14 July 2016, while 108 were identified in 2015. Additional, 87 victims were sheltered from 1 January to 14 July 2016, and 69 were sheltered in 2015, either in special shelter houses of the Directorate-General of Migration Management for human trafficking victims, or in shelters located in provinces run by the Ministry of Family and Social Policies. **Noting the number of victims of trafficking identified in the country, and the various measures taken by the Government to protect them, the Committee welcomes the enactment of new laws in this regard, and requests the Government to provide information on their application in practice with regard to the identification of victims and the provision of protection and assistance to such victims, including the number of persons benefiting from related services.**

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

## Uganda

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)**

*Article 1(a) of the Convention.* Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been referring to the following provisions of the national legislation, under which penal sanctions involving compulsory prison labour, by virtue of section 62 of the Prisons Regulations, may be imposed:

- the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour; and
- sections 54(2)(c), 55, 56 and 56(A) of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such a combination, illegal and punishable with imprisonment (involving an obligation to perform labour).

The Committee requested the Government to take the necessary measures to ensure that the above provisions are amended or repealed so as to ensure the compatibility of the legislation with the Convention.

The Committee notes the Government's indication in its report that both the Public Order and Security Act and the Penal Code are in conformity with the Convention.

However, the Committee notes the statements made by a certain number of governments in the 2016 report of the Working Group on the Universal Periodic Review (report to the UN Human Rights Council (HRC)), recommending the amendment of the Public Order Management Act of 2013, in order to ensure full respect of freedom of association and peaceful demonstration (A/HRC/34/10, paragraphs 115.101, 117.8, 117.18 and 117.52). Moreover, the Committee notes that, according to the Report of the HRC of 2017, a certain number of stakeholders regretted that Uganda failed to fully implement its commitments from the first Universal Periodic Review regarding freedom of expression, peaceful assembly and association. They also expressed concern over physical assaults on journalists and the harassment of political activists as well as human rights defenders, and urged for reforms to the Penal Code, the Press and Journalists Act and the Public Order Management Act of 2013 (A/HRC/34/2, paragraphs 688, 692, 693 and 694).

The Committee further notes with *concern* that penalties of imprisonment (involving compulsory prison labour) may be imposed under the following provisions of the Public Order Management Act, 2013: section 5(8) (disobedience of statutory duty in case of organizing a public meeting without any reasonable excuse); and section 8(4) (disobedience of lawful orders during public meetings).

In this regard, the Committee is bound to recall that *Article 1(a)* of the Convention prohibits all recourse to sanctions involving an obligation to perform labour, as a means of political coercion or as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to, or call for, violent means to these ends. ***In light of the above considerations, the Committee urges the Government to take the necessary measures to ensure that the abovementioned provisions of the Public Order and Security Act, No. 20 of 1967, the Penal Code, and the Public Order Management Act of 2013 are amended or repealed so as to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on measures taken in this regard.***

*Article 1(d)*. *Penal sanctions involving compulsory labour as a punishment for having participated in strikes.* The Committee previously noted that the Labour Disputes (Arbitration and Settlement) Act, 2006, contains provisions concerning the resolution and settlement of labour disputes which could lead to the imposition of compulsory arbitration procedures, thus making strikes or other industrial action unlawful. Strikes may be declared unlawful, for example, where the minister or the labour officer refers a dispute to the Industrial Court (section 28(4)) or where the Industrial Court makes an award which has come into force (section 29(1)). The organization of strikes in these circumstances is punishable with imprisonment (involving compulsory prison labour) pursuant to sections 28(6), 29(2) and (3) of the Act, and the Committee accordingly reminded the Government that such penalties were not in conformity with the Convention. In addition, the Committee noted that, under section 34(5) of the Labour Disputes (Arbitration and Settlement) Act, 2006, the minister may refer disputes in essential services to the Industrial Court, thus making illegal any collective withdrawal of labour in such services, with violation of this prohibition being punishable with imprisonment (involving an obligation to perform labour) (section 33(1) and (2) of the Act). The Committee requested the Government to take the necessary measures to bring the abovementioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006 into conformity with the Convention.

The Committee notes the absence of information on this point in the Government's report. ***The Committee therefore once again requests the Government to take the necessary measures to bring the abovementioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006, into conformity with the Convention, either by removing the penalties of imprisonment involving compulsory labour, or restricting their scope to essential services in the strict sense of the term (namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population), or to situations of acute national crisis. The Committee requests the Government to provide information on measures taken in this regard.***

## United States

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1991)**

The Committee notes the observations of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), received with the Government’s report.

*Article 1(d) of the Convention. Sanctions involving compulsory labour for participation in strikes.* In its previous comments, the Committee noted that, pursuant to article 12, section 95–98.1, of the North Carolina General Statutes, strikes by public employees are declared illegal and against the public policy of the State. Under section 95–99, any violation of the provisions of article 12 is declared to be a class 1 misdemeanour. Under section 15A–1340.23, read together with section 15A–1340.11 of Chapter 15A (Criminal Procedure Act), a person convicted of a class 1 misdemeanour may be sentenced to “community punishment” and, upon a second conviction, to “active punishment”, that is, imprisonment. In this regard, the Committee noted the information in the Compendium of Community Corrections Programs in North Carolina (published by the North Carolina Sentencing and Policy Advisory Commission) indicating that the imposition of community punishment may include assignment to the State’s Community Service Work Program, which requires the offender to work for free for public or non-profit agencies in an area that will benefit the greater community. The Committee also noted that article 3 (Labor of Prisoners), section 148–26, of Chapter 148 (State Prison System) states that it is the public policy of the State of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them. In response, the Government indicated that the Committee’s observations had been forwarded to the authorities in North Carolina and that it had requested these authorities to provide information on any steps taken by the state government relating to these comments.

The Committee once again notes the Government’s indication in its report that state court records do not reveal a single instance in which an individual has been convicted for engaging in an illegal public sector strike. The Government reiterates that, in the unlikely event that an individual were to be convicted, North Carolina law would not require the judge to order the illegal striker to perform work in violation of the Convention. Rather, the judge would have the discretion whether to order the convicted individual to perform work and can choose to impose only a fine.

The Committee further notes the comments of the AFL–CIO according to which states are obliged under the Convention to abolish all penalties involving any form of compulsory labour which may be imposed as a punishment for having participated in strikes, and this obligation extends to both legislation and practice. As sections 95–98.1 and 95–99 might have a chilling effect on public sector workers who might otherwise decide to engage in strikes, these provisions should be repealed or amended.

Observing that it has been raising this issue for more than a decade, the Committee must once again recall that *Article 1(d)* of the Convention prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes. Referring to the explanations contained in paragraph 315 of its 2012 General Survey on the fundamental Conventions, the Committee recalls that, regardless of the legality of the strike action, any sanctions imposed should not be disproportionate to the seriousness of the violations committed, and that in both legislation and practice, no sanctions involving compulsory labour should be imposed for the mere fact of organizing or peacefully participating in strikes. ***The Committee therefore once again requests the Government to take the necessary measures to bring the North Carolina General Statutes into conformity with both the Convention and the indicated practice, in ensuring the repeal or amendment of sections 95–98.1 and 95–99, so as to ensure that penalties of compulsory labour (through the Community Service Work Program or during imprisonment) cannot be imposed for participation in a strike. The Committee hopes that in its next report the Government will be in a position to provide information on the progress achieved in this regard.***

*Article 1(e). Racial discrimination in the exaction of compulsory prison labour.* In its previous comments, the Committee noted the information from the US Department of Justice showing the significant over-representation of African Americans and Latinos/Hispanics within US prison populations. It also noted that a prison sentence in the United States normally involves an obligation to perform labour. The Committee recalled that, 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, but the punishment involving compulsory labour is meted out more severely to certain groups defined in racial, social, national or religious terms, this situation is in violation of the Convention. In this regard, the Committee noted the Government’s statement that it was committed to working to root out any unwarranted and unintended disparities that may exist in the criminal justice process. It noted the Government’s statement that no legislative action was taken on either the Justice Integrity Act of 2011 which sought to address any unwarranted racial and ethnic disparities in the criminal process, or the Byrne/JAG Programme Accountability Act, which would require states and local governments receiving certain federal law enforcement grants to implement policies and practices to identify and reduce racial and ethnic disparities in the criminal justice system, but that other bills, which relate to the issues raised by the Committee, were pending before Congress. It further noted initiatives undertaken by several states.

The Committee notes the Government’s statement in its report that it remains committed to ensuring that the criminal laws, and criminal law enforcement, do not discriminate on the basis of race. The Committee also notes the Government’s statement that both the Justice Integrity Act of 2011 and the Byrne/JAG Programme Accountability Act were reintroduced in the House of Representatives in January 2014, but neither bill was referred out of subcommittee. The

Government indicates that other bills, which relate to the issues raised by the Committee are pending before Congress. The Government also indicates that it continues to implement the Juvenile Justice and Delinquency Preventions Act of 2002, which requires states participating in the US Department of Justice's Formula Grants Program to undertake efforts designed to reduce the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system. This programme involves determining whether there is disproportionality in a specific jurisdiction, assessing the mechanisms that contribute to this disparity, implementing delinquency prevention and systemic improvement measures, and monitoring this disparity. As of 2014, 34 states participated in the Program.

With regard to practical measures and policy initiatives, the Committee notes the Government's indication that in August 2013, the US Department of Justice (DOJ) issued a report entitled "Smart on Crime: Reforming the Criminal Justice System for the 21st Century", which included measures to reform sentencing to eliminate unfair disparities and reduce overburdened prisons. DOJ also announced a change in its charging policies so that certain persons who have committed low-level, nonviolent drug offenses and who have no significant ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose high mandatory minimum sentences. The Committee also notes the information in the Government's report that in April 2014, DOJ's Deputy Attorney General announced a Clemency Initiative to encourage low-level, nonviolent federal inmates who would not pose a threat to public safety if released, to apply to the President for commutation of sentence. The Initiative is intended to identify appropriate candidates for clemency by reference to certain specified criteria and enable DOJ to review the requests efficiently and make timely and effective recommendations for action to the President. Also in 2014, DOJ encouraged the formation of Clemency Project 2014, a consortium of criminal justice organizations that recruits, trains, and advises attorneys willing to provide pro bono assistance to inmates petitioning for commutation under the Clemency Initiative. Additionally, when systemic problems of discriminatory policing emerge in a police department or sheriff's office, or officers abuse their power, DOJ uses its statutory authority to investigate and bring civil actions to change discriminatory policing policies. In recent years, DOJ has undertaken several investigations of discriminatory policing and pursued effective remedies in several jurisdictions. Lastly, the Committee notes the Government's information on various initiatives being taken by several States to reduce racial bias within the criminal justice system. For instance, in April 2016, the MacArthur Foundation announced that it is awarding to 11 jurisdictions grants of between \$1.5 million and \$3.5 million over two years to fund state and local government projects, programs and reforms aimed at reducing their jail populations and addressing racial and ethnic disparities in their justice systems. The 11 jurisdictions include Charleston County, South Carolina; Harris County, Texas; Lucas County, Ohio; Milwaukee County, Wisconsin; New Orleans, Louisiana; New York City, New York; Philadelphia, Pennsylvania; Pima County, Arizona; Spokane County, Washington; the State of Connecticut; and St. Louis County, Missouri. Each of the 11 jurisdictions will implement plans tailored to their local context comprised of a variety of local solutions, such as alternatives to arrest and incarceration, implicit bias training for law enforcement and other system actors, and community-based treatment programs.

The Committee takes due note of the initiatives taken at the federal and state levels. However, the Committee notes that the Committee on the Elimination of Racial Discrimination (CERD), in its concluding observations of 25 September 2014, expressed concern that members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences and that the over-representation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offence sentencing policies, and the implementation of repeat offender laws (CERD/C/USA/CO/7-9, paragraph 20).

*While welcoming the various initiatives taken by the Government to address racial disparities in the criminal justice system, such as the launch of the "Smart on Crime" initiative in August 2013 and the Clemency Initiative and Project in 2014, the Committee strongly encourages the Government to strengthen its efforts to ensure that racial discrimination at the sentencing and other stages of the criminal justice process do not result in the imposition of racially disproportionate prison sentences involving compulsory labour. In this regard, the Committee urges the Government to pursue its efforts to ensure the adoption of federal legislation to address this issue. It also encourages the Government to pursue and strengthen its efforts at the state level to implement policies and practices to identify and reduce racial and ethnic disparities in the criminal justice system to ensure that the punishment involving compulsory labour is not meted out more severely to certain racial and ethnic groups. It requests the Government to continue to provide information on measures taken in this regard, and on the results achieved.*

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 29** (Albania, Angola, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belize, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Eritrea, Estonia, Fiji, Finland, France: French Polynesia, Gambia, Guinea, Guinea-Bissau, Haiti, Kenya, Lao People's Democratic Republic, Lebanon, Republic of Maldives, Nicaragua, Panama, Peru, Poland, Portugal, Rwanda, Saint Lucia, Samoa, Sao Tome and Principe, Serbia, Singapore, Solomon Islands, Sri Lanka, Sudan, Syrian Arab Republic, United Republic of Tanzania, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Tunisia,

Turkey, Uruguay, Vanuatu, Yemen); **Convention No. 105** (Afghanistan, Albania, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belize, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, China: Hong Kong Special Administrative Region, Comoros, Congo, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Eritrea, Fiji, Gambia, Guinea, Guinea-Bissau, Kenya, Kyrgyzstan, Lebanon, Republic of Maldives, Nigeria, Pakistan, Panama, Papua New Guinea, Peru, Saint Vincent and the Grenadines, Samoa, Serbia, Sierra Leone, Solomon Islands, Sri Lanka, Sudan, Syrian Arab Republic, United Republic of Tanzania, Thailand, Turkey, Vanuatu, Yemen).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 29** (Antigua and Barbuda, China: Macau Special Administrative Region); **Convention No. 105** (China: Macau Special Administrative Region, Sao Tome and Principe).

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

### Afghanistan

#### Minimum Age Convention, 1973 (No. 138) (ratification: 2010)

*Article 1 of the Convention. National policy and application of the Convention in practice.* The Committee previously noted the implementation of the various measures taken by the Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD) to prevent child labour, including: the National Child Labour Strategy, 2012, followed by a National Action Plan to prevent child labour in brick kilns; a National Strategy for the Protection of Children at Risk; and a National Strategy for Working Street Children, 2011. However, the Committee noted, that children in Afghanistan are engaged in child labour and often in hazardous conditions, including in agriculture, carpet weaving, domestic work, street work, and brick making. Moreover, 27 per cent of children between the ages of 5 and 17 years (2.7 million children) are engaged in child labour with a higher proportion of boys (65 per cent). Of this, 46 per cent are children between 5 and 11 years of age. At least half of all child labourers are exposed to hazardous working conditions such as dust, gas, fumes, extreme cold, heat or humidity. Moreover, 56 per cent of brick makers in Afghan kilns are children and the majority of these are 14 years of age and below.

The Committee notes that the Government's report contains no new information in this regard. The Committee once again notes with *concern* that a significant number of children under the age of 14 years are engaged in child labour, of which at least half are working in hazardous conditions. **The Committee therefore urges the Government to strengthen its efforts to ensure the progressive elimination of child labour in all economic activities, both in the formal and informal sectors, and requests that the Government provide information on the measures taken in this regard, as well as the results achieved.**

*Article 2(1). Scope of application.* The Committee noted that according to sections 5 and 13 of the Labour Law, read in conjunction with the definition of a "worker", the Law applies only to labour relations on a contractual basis and, therefore, that the provisions of the Labour Law did not appear to cover the employment of children outside a formal employment relationship, such as children working on their own account or in the informal economy.

Noting the absence of information provided in this regard in the Government's report, the Committee recalls that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship. **The Committee therefore requests, once again, that the Government take the necessary measures to ensure that all children, including children working outside a formal employment relationship such as children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. In this regard, the Committee encourages, once more, the Government to review the relevant provisions of the Labour Law in order to address these gaps as well as to take measures to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy with a view to ensuring such protection in this sector.**

*Article 7(1) and (3). Minimum age for admission to light work and determination of light work.* The Committee previously noted that section 13(2) of the Labour Law sets 15 years as the minimum age for employment in light work in industries and section 31 prescribes a weekly working period of 35 hours for young persons between 15 and 18 years of age. It observed that the minimum age for light work of 15 years is higher than the minimum age for admission to employment or work of 14 years, specified by Afghanistan.

Noting the absence of information provided in this regard by the Government, the Committee once again draws the Government's attention to the fact that *Article 7(1)* of the Convention is a flexibility clause which provides that national laws or regulations may permit the employment or work of persons aged 13–15 years in light work activities which are 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.

The Committee notes the lack of information contained in the Government's report and recalls once again that *Article 7(4)* 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 of age (see General Survey on the fundamental Conventions, 2012, paragraphs 389 and 391). **In view of the fact that a high number of children under 14 years of age are engaged in child labour in the country, the Committee once again requests that the Government regulate light work activities for children between 12 and 14 years of age to ensure that children who, in practice, work under the minimum age are better protected. The Committee also requests that the Government take the necessary measures to determine light work activities that children of 12–14 years of age are permitted to undertake and to prescribe the number of hours and conditions of such work, pursuant to *Article 7(3)* of the Convention.**

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2010)**

The Committee notes the observations of the International Organisation of Employers (IOE) received on 30 August 2017, and the in-depth discussion on the application of the Convention by Afghanistan in the Committee on the Application of Standards at the 106th Session of the International Labour Conference in June 2017.

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

*Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery or practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for use in armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration.* In its previous comments, the Committee noted that the Law on prohibiting the recruitment of child soldiers criminalizes the recruitment of children under the age of 18 years into the Afghan Security Forces. The Committee also noted that a total of 116 cases of recruitment and use of children, including one girl, were documented in 2015. Out of these: 13 cases were attributed to the Afghan National Defence and Security forces; five to the Afghan National Police; five to the Afghan Local Police; and three to the Afghan National Army; while the majority of verified cases were attributed to the Taliban and other armed groups who used children for combat and suicide attacks. The United Nations verified 1,306 incidents resulting in 2,829 child casualties (733 killed and 2,096 injured), an average of 53 children were killed or injured every week. A total of 92 children were abducted in 2015 in 23 incidents.

In this regard, the Committee noted the following measures taken by the Government:

- The Government of Afghanistan signed an Action Plan with the United Nations on 30 January 2011 to end and prevent the recruitment and use of children by the Afghan National Security Forces, including the Afghan National Police, Afghan Local Police and Afghan National Army.
- A roadmap to accelerate the implementation of the Action Plan was endorsed by the Government on 1 August 2014.
- The Government endorsed age-assessment guidelines to prevent the recruitment of minors.
- In 2015 and early 2016, three additional child protection units were established in Mazar e Sharif, Jalalabad and Kabul, bringing the total to seven. These units are embedded in Afghan National Police recruitment centres and are credited with preventing the recruitment of hundreds of children.

The Committee notes that the Conference Committee recommended that the Government take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children into armed forces and groups. It further recommended the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in law and practice. Finally, the Conference Committee recommended the Government to take effective and time-bound measures to provide for the rehabilitation and social integration of children who are forced to join armed groups.

The Committee notes the IOE's indication that children are engaged in armed conflict in Afghanistan. The Committee notes the Government representative's indication to the Conference Committee that the Law on the Prohibition of Children's Recruitment in the Armed Forces (2014), along with other associated instruments, has helped prevent the recruitment of 496 children into national and local police ranks in 2017. Moreover, the Ministry of Interior, in cooperation with relevant government agencies, was effectively implementing Presidential Decree No. 129 which prohibits, among others, the use or recruitment of children in police ranks. Inter-ministerial commissions tasked with the prevention of child recruitment in national and local police have been established in Kabul and the provinces, and child support centres have been set up in 20 provinces, with efforts under way to establish similar centres in the remaining provinces. Finally, the Committee notes the Government's indication that the National Directorate of Security has recently issued Order No. 0555, prohibiting the recruitment of underage persons and that the Order is being implemented in all security institutions and monitored by national and international human rights organizations. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee requests the Government to continue its efforts in taking immediate and effective measures to put a stop, in practice, to the recruitment of children under 18 years by armed groups, the national armed forces and police authorities, as well as measures to ensure the demobilization of children involved in armed conflict. It once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, it requests the Government to take effective and time-bound measures to remove children from armed groups and armed forces and ensure their rehabilitation and social integration, and to provide information on the measures taken in this regard and on the results achieved.***

*Articles 3(b) and 7(2)(b). Use, procuring or offering of children for prostitution and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* The Committee previously noted that concerns remained regarding the cultural practice of *bacha-bazi* (dancing boys), which involves the sexual exploitation of boys by men in power, including the Afghan National Defence and Security Forces' commanders. It also noted that there are many child victims of *bacha bazi*,

particularly boys between 10 and 18 years of age who have been sexually exploited for long periods of time. The Committee further noted that some families knowingly sell their children into forced prostitution, including for *bacha-bazi*.

The Committee notes that the Conference Committee recommended the Government to take immediate and effective measures to eliminate the practice of *bacha-bazi*. It also recommended the Government to take effective and time-bound measures to provide for the rehabilitation and social integration of children who are sexually exploited.

The Committee notes the Government representative's indication to the Conference Committee that the Child Protection Law has been submitted to Parliament for adoption and makes the practice of *bacha-bazi* a criminal offence. The Committee also notes the new Law on Combating Human Trafficking in Persons and Smuggling of Migrants of 2017 (Law on Human Trafficking of 2017). It notes that section 10(2) of this Law punishes the perpetrator of trafficking to eight years' imprisonment when the victim is a child or when the victim is exploited for the purpose of dancing. ***The Committee urges the Government to take the necessary measures to ensure the effective implementation of the prohibition contained in section 10(2) of the Law on Human Trafficking of 2017. It requests the Government to provide information on the results achieved to effectively eliminate the practice of bacha-bazi, to remove children from this worst forms of child labour and to provide assistance for their rehabilitation and social integration. It also requests the Government to provide information on the adoption of the Child Protection Law, and its effective implementation.***

*Article 7(2). Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and taking into account the special situation of girls. Access to free basic education.* The Committee previously noted the Government's statement that as a result of the past three decades of conflict, insecurity and drought, children and youth are the most affected victims, a majority of whom are deprived of proper education and training. The Committee noted that Afghanistan is among the poorest performers in providing sufficient education to its population. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013 due to insurgents' attacks and threats that lead to the closure of schools. In addition to barriers arising from insecurity throughout 2015, anti-government elements deliberately restricted the access of girls to education, including closure of girls' schools and a ban on girls' education. More than 369 schools were closed partially or completely, affecting at least 139,048 students, and more than 35 schools were used for military purposes in 2015. Finally, the Committee noted the low enrolment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-state armed groups.

The Committee notes the Government representative's statement at the Conference Committee that many households respond to poverty by taking their children out of school and forcing them into labour. The Government indicates that child labour is not only a law enforcement matter but a fundamental problem which requires a comprehensive understanding and a robust response mechanism. With a view to providing preschool support to children under the age of six, the Ministry of Labour, Social Affairs, Martyrs and Disabled has established over 366 local kindergartens which house over 27,000 children. The Government also indicates it is taking strong action against the exploiters as well as the families who knowingly force their children into prostitution and expects a sharp decline in the practice in the coming years. Finally, the Committee notes the Government's indication that school burnings and the imposition of bans in Taliban-controlled areas prevented girls and children from attending school. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to raise awareness among households that education is key in preventing the engagement of children in the worst forms of child labour. Additionally, it once again urges the Government to take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly of girls.***

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

## Albania

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the in-depth discussion on the application of the Convention by Albania in the Committee on the Application of Standards at the 104th Session of the International Labour Conference in June 2014.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014:

*Article 3(a) of the Convention. Sale and trafficking of children for commercial sexual exploitation.* The Committee previously observed that, although the trafficking of children for labour or sexual exploitation was prohibited by law, it remained an issue of concern in practice. It noted the Government's information concerning the National Anti-Trafficking Strategy as well as the various measures implemented to prevent child trafficking. Nevertheless, the Committee expressed its concern at the continued prevalence of the trafficking of children under 18 years of age in Albania.

The Committee notes the Government's information concerning its recent measures taken in the framework of the National Anti-Trafficking Strategy, including the establishment of standard operating procedures on the identification and referral of victims and potential victims of trafficking (SOPs), which were approved in 2014 and which enable the coordination and comprehensive identification, referral and protection of trafficking victims. The Government indicates that the implementation of

the SOPs has enhanced the capacity of the law enforcement personnel, social security providers and the State Labour Inspectorate in this respect.

The Committee additionally notes the adoption of Act No. 10347 of 11 April 2014 which prohibits the sale and trafficking of children under sections 3(e) and 24. The Government indicates that, under this Act, and to achieve the objectives of its Action Plan for Children (2012–15), the Child Protection Unit (CPU) has been established and is collaborating with labour inspectors in municipalities and communes to strengthen sanctions for violations as well as to enhance the capacity of labour inspectors to identify children at risk. Finally, the Committee notes Act No. 144 of 2 May 2013, which has modified the Penal Code to increase the penalties for crimes against children, including crimes related to trafficking.

The Committee takes due note of the Government's legislative and programmatic measures to protect children from trafficking. It observes, however, that the Committee on the Rights of the Child (CRC), in its concluding observations on the combined second to fourth periodic reports of Albania (CRC/C/ALB/CO/2-3, paragraphs 17 and 82) in 2012, expressed serious concern that Albania continues to be a source country for children subjected to sex trafficking and noted the lack of available data concerning these children. **The Committee accordingly urges the Government to intensify its efforts, within the framework of the National Anti-Trafficking Strategy and the implementation of the SOPs, to combat the trafficking of persons under 18 years of age, and to ensure that thorough investigations and robust prosecutions of persons who commit this offence are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. The Committee requests the Government to provide data on the number of children subject to sex trafficking, to the extent possible, disaggregated by age and gender.**

*Article 3(c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* Further to its previous comment, the Committee notes with **satisfaction** the adoption of Act No. 10347 of 11 April 2014 on the protection of children's rights which, under section 23, read in conjunction with section 3, prohibits the involvement of children under the age of 18 in the use, production and trafficking of drugs and narcotics. **The Committee requests the Government to provide information on the application in practice of this new Act, including the number and nature of violations detected.**

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Street children and children from minority groups.* In its previous comment, the Committee noted that significant numbers of Albanian boys and girls are engaged in begging, starting as early as 4 or 5 years, and that most children involved are from the Roma or Egyptian communities. It further noted the Government's statement that the major issues with regard to the Roma community are low levels of education (with high illiteracy and low numbers of pupils enrolled), poor living conditions, poverty, and high levels of trafficking and prostitution and that, although it took measures to increase attendance in schools by Roma children, the possibility of teaching the Roma language in schools had not yet been fully implemented.

The Committee notes the Government's information concerning a 2014 inter-institutional initiative entitled "Support for families and children living on the street", which aims to ensure the protection of children against all forms of abuse, exploitation and neglect. The Committee further notes the Government's references to the Action Plan for Children (2012–15) and the Action Plan for the Decade of Roma Inclusion (2010–15), both of which aim to, among others, register and increase the attendance and participation of Roma children in kindergarten and compulsory education. The Committee notes, in this connection, the Government's information contained in its written reply to the CRC on the combined second, third and fourth periodic reports (CRC/C/ALB/2-4) of 2012, which lists the various legislative and institutional reforms that have been carried out concerning the admission and attendance of Roma children, as well as its programme of cooperation with UNICEF to provide incentives to Roma children to attend education. The Committee further notes the Government's statistical information, which indicates that for the 2012–13 school year, 664 Roma children attended preschool, 3,231 Roma children attended compulsory education, and all Roma children received full reimbursement for their textbooks.

While taking due note of the Government's measures to protect children from living on the street and to enhance the opportunities for Roma children to attend education, the Committee also notes that the CRC, in its concluding observations (CRC/C/ALB/CO/2-3, paragraph 70), observed that, contrary to the law, minority children, and in particular Roma children, have limited possibility to be taught in their own language and learn their history and culture within the framework of the national teaching curricula and called for the Government to provide minority-language education, particularly for Roma children. It further takes into account the 2012 assessment report carried out by the National Inspectorate of Pre-University Education (IKAP), with UNICEF assistance, on the implementation of the "The Second Chance" programme for the education of students who have dropped out of school, which found that, despite the Government's programmes to increase school attendance, the number of Roma children who attend school still remained at very low figures. **The Committee accordingly requests the Government to intensify its efforts to take effective and time-bound measures, including within the framework of Action Plan for Children (2012–15), the Action Plan for the Decade of Roma Inclusion (2010–15), and in cooperation with UNICEF, to ensure the protection of Roma children against the worst forms of child labour, particularly trafficking, forced begging and work on the streets. It also requests the Government to provide information on the implementation of the "Support for families and children living on the street" initiative, including the results achieved.**

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

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

## Algeria

### Minimum Age Convention, 1973 (No. 138) (ratification: 1984)

*Article 1 of the Convention. National policy.* In its previous comments, the Committee noted that a National Plan of Action (NPA) had officially been launched on 25 December 2008 on the theme "An Algeria fit for children" for the period 2008–15. The NPA called, among other measures, for the development and updating of legislation on child protection, and the strengthening and development of enforcement mechanisms for the legislation in force.

The Committee notes the information provided in the Government's report, according to which Act No. 15-12 of 15 July 2015 on child protection has been enacted. Under this Act, a national body for the protection and promotion of the rights of the child (OPPDE) was finally established in 2017. The OPPDE is presided by the national ombudsman, whose

main mission is to oversee the implementation and periodic evaluation of the national and local programmes for the protection and promotion of the rights of the child (section 13).

In addition, under sections 21–31 of Act No. 15-12, children’s social protection at the local level falls to the “community oversight services”. A minimum of one service provider is established in each *wilaya* (administrative division). The community oversight services monitor the situation of children at risk and provide assistance to their families. Thus, under section 2 of Act No. 15-12, the term “child at risk” is understood as “a child whose health, morals, education or safety are at risk or may be put at risk, or whose living conditions or behaviour are likely to expose him or her to a potential risk or compromise his or her future, or whose environment puts at risk his or her physical, psychological or educational well-being”. The situations considered to expose the child to risk include, in particular: an infringement of their right to education, and the economic exploitation of a child, particularly by their employment or forced engagement in work that prevents them from studying, or that harms their health or physical or moral well-being. ***The Committee requests that the Government continue its efforts to combat work by children under 16 years of age which is the minimum age of admission to work in Algeria. In this regard, it requests that the Government provide the information on the concrete measures taken by the OPPDE to eliminate child labour and the results achieved. It also requests that the Government provide information on the number of children under 16 years who have been identified by the community oversight services as being “at risk” because of their employment or forced engagement in work and who have benefited from the protection under Act No. 15-12, bearing in mind that the minimum age for hazardous work under the Convention is 18 years.***

*Article 2(1). Scope of application and labour inspection.* In its previous comments, the Committee noted that the provisions of Algerian legislation, including those of Act No. 90-11 on working conditions of 21 April 1990 and of Ordinance No. 75-59 of 26 September 1975 issuing the Code of Commerce, do not regulate all the economic activities that a child under 16 years of age may carry out in the informal economy or on their own account and which are covered by the Convention, for example in agriculture and domestic work, where the economic exploitation of children is more frequent. In this regard, the Committee noted that around 300,000 children aged under 16 years of age are engaged in work in Algeria. Furthermore, the Committee noted that the Committee on the Rights of the Child has expressed its concern that the minimum age for admission to employment is not applied in Algeria, in particular for children working in the informal sector.

The Committee notes the statistics provided by the Government on the visits conducted by labour inspection in various enterprises and undertakings since 2002, the most recent of which include:

- in 2014, of the 14,201 employers in the private sector, comprising 79,063 workers, 32 workers under 16 years were detected;
- in 2015, of the 15,093 employers in the private sector, comprising 98,327 workers, 79 workers under 16 years were detected;
- in 2016, of the 11,575 employers in the private sector, comprising 100,608 workers, 12 workers under 16 years were detected.

The Committee notes, however, that these statistics do not relate to the informal economy and notes yet again with *regret* that the Government’s report is silent on this issue of children working on their own account or in the informal economy. The Committee recalls that the Convention applies to all branches of economic activity, formal and informal, and that it covers all forms of employment and work, whether it is carried out on the basis of an employment relationship or not and whether it is remunerated or not. In this regard, with reference to the 2012 General Survey on the fundamental Conventions (paragraph 407), which notes that the inability of labour inspection to monitor child labour outside a given area is particularly problematic, especially when child labour is concentrated in a sector outside its coverage, the Committee emphasizes the need to ensure that the labour inspection system effectively monitors child labour in all regions and all branches of economic activity. In addition, the Committee refers to paragraph 347 of the 2012 General Survey, which describes the variety of programmes and measures that States have implemented in an effort to combat child labour in the informal economy. 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. Addressing the needs of children engaged in, or at risk of becoming engaged in, the informal economy may also include social protection measures, or mainstreaming the issue of children working in the informal economy into national action plans to combat child labour. ***The Committee therefore encourages the Government to undertake programmatic measures to ensure that the protection provided by the Convention is enjoyed, in practice, by children working in the informal economy. It also invites the Government to strengthen the capacities of labour inspection to enable it to monitor child labour in the informal economy so that labour inspectors can detect all cases of labour involving children under 16 years of age. The Committee requests the Government to provide information on the progress made in this regard. It also requests that the Government continue providing information on inspections carried out in practice by labour inspectors responsible for monitoring child labour by providing information on the number of violations registered and extracts from labour inspectors’ reports.***

*Application of the Convention in practice.* In its previous comments, the Committee noted that the Committee on the Rights of the Child noted with concern the limited progress made to establish a national, comprehensive and

centralized data collection system covering child protection. That Committee was particularly concerned that data by geographic location, socio-economic status and groups of vulnerable children was lacking, and that policy-makers often used unreliable national data to assess the situation and to formulate policies to address the problems of children, including those working in the informal sector.

The Committee notes with *regret* the absence of information in this regard in the Government's report. The Committee notes, however, that under section 13 of Act No. 15-12 of 15 July 2015 on child protection, the national ombudsman must establish a national information system on the situation of children in Algeria in coordination with the administrative divisions and institutions concerned. ***The Committee once again urges the Government to take the necessary steps to, either through a national information system established by the national ombudsman or by other means, ensure that sufficient data on work by children under 16 years of age in Algeria are available, in particular concerning children working on their own account or in the informal economy. In this regard, it requests that the Government provide information on the application of the Convention in practice, including statistics and information on the nature, scale and development of child labour. As far as possible, all information should be disaggregated by age and gender.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and the penalties applied. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted that section 303bis(4) of Act No. 09-01 of 25 February 2009, prohibits the trafficking of persons, in particular for economic and sexual exploitation, and that the applicable penalty is imprisonment of five to 15 years and a fine of 500,000 to 1,500,000 Algerian dinar, with heavier penalties for persons trafficking children (section 303bis(5)). The Committee nevertheless noted with concern that the United Nations Committee on the Rights of the Child (CRC) expressed particular concern that there had been no investigation or prosecution for trafficking offences, or conviction or punishment of trafficking offenders and that some traffickers reportedly benefited from the complicity of some members of the Algerian police. It also noted that child victims of trafficking may be jailed for unlawful acts committed as a result of their being trafficked, such as engaging in prostitution or not having adequate immigration documentation.

The Committee notes with *regret* that the Government still has not provided any information on this matter in its report. It nevertheless notes that training workshops in Algeria on investigations and prosecutions for the trafficking of persons, and on victim protection, have been held in collaboration with the United Nations Office on Drugs and Crime (UNODC). These training workshops have brought together representatives of various departments forming the National Committee on Preventing and Combating Trafficking in Persons, which was established by Presidential Decree No. 16-249 of 26 September 2016, as well as law enforcement officials. ***The Committee requests the Government to provide information on the impact of these training workshops on the elimination in practice of the sale and trafficking of children under 18 years of age. It also requests the Government to take measures to ensure that child victims of trafficking are treated as victims rather than offenders, and to provide information on the progress made in this regard. The Committee further requests the Government to continue taking measures to ensure that in-depth investigations and effective prosecutions are conducted of persons who engage in the sale and trafficking of children, including state officials suspected of complicity, and that sufficiently effective and dissuasive sanctions are imposed. The Committee urges the Government to provide information on the number of infringements reported, investigations conducted, prosecutions, convictions and penal sanctions applied, disaggregated by age and gender of the victims.***

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee noted on several occasions, since its first comments published in 2004, that while the national legislation establishes severe penalties for the possession, use or trafficking of illegal drugs, there is no legislative provision prohibiting the use, procuring or offering of a child under 18 years of age for the production and trafficking of drugs.

The Committee notes with *regret* that the Government does not provide any new information and has still not remedied this shortcoming in the application of the Convention. The Committee once again reminds the Government that under *Article 3(c)* of the Convention, the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, is among the worst forms of child labour. Moreover, under *Article 1*, immediate and effective measures to secure the prohibition of the worst forms of child labour must be taken *as a matter of urgency*. ***The Committee thus urges the Government to take, as a matter of urgency, the necessary measures to ensure, in law and in practice, the prohibition of the use, procuring or offering of a child under 18 years of age for illicit activities, in particular for the production and trafficking of drugs, and to establish sufficiently effective and dissuasive sanctions. It requests the Government to provide information on the progress made in this regard.***

*Article 4(1). Determination of hazardous types of work.* In its previous comments, the Committee noted the Government's indication that the issue of determining hazardous types of work had been addressed during the drafting of the new Labour Code and that a list of prohibited types of work was due to be established by regulation. It noted that the CRC expressed concern that Algeria had still not determined the hazardous types of work prohibited for persons under the age of 18, even though thousands of children continue to be subjected to the worst forms of child labour, especially in agriculture, as street vendors and domestic servants.

The Committee notes that the Government's report does not contain any information on this matter. However, the Committee takes note of the draft Labour Code dated October 2015, section 48 of which provides that "minor workers and apprentices" below the age of 18 may not be engaged in work that is likely to harm the health, safety or morals of children. The same section provides that the list of these types of work will be determined through regulation. The Committee once again reminds the Government that under *Article 4(1)* of the Convention, hazardous types of work shall be determined, *as a matter of urgency*, by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. **Noting once again that it has been raising this issue for several years, the Committee urges the Government to take immediate measures to ensure the adoption of the draft Labour Code and of the relevant regulation on the list of types of hazardous work prohibited to children under 18 years of age, as a matter of urgency. It urges the Government to provide information on any progress made in this regard.**

*Article 6. Programmes of action. Sale and trafficking of children.* The Committee notes that, according to the 2016 UNODC *Global report on trafficking in persons*, a national plan of action to combat trafficking in persons was developed in October 2015, one of the objectives of which is to prevent and reduce trafficking in persons by improving legislation in that field, enhancing the national capacity for detecting and identifying victims, and enhancing international cooperation. The Committee notes that section 3 of Decree No. 16-249 of 26 September 2016 provides that the National Committee on Preventing and Combating Trafficking in Persons – composed of 20 members from various ministries and government institutions – shall oversee the implementation of this plan of action. **The Committee requests the Government to take the necessary time-bound measures under the National Plan of Action to Combat Trafficking in Persons to combat the trafficking of children under 18 years of age for economic or sexual exploitation. It requests the Government to provide information on progress made in this regard.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, and providing assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking of children.* In its previous comments, the Committee noted that the CRC expressed particular concern that there were no government-operated shelters for victims of trafficking and that even civil society was prohibited from operating any such shelters because they would be penalized for harbouring undocumented migrants. The Committee also noted that Algeria did not provide any medical or psychological assistance to children for their rehabilitation and social integration.

The Committee notes with *regret* that the Government's report still does not contain any information in this regard. It reminds the Government that under *Article 7(2)* of the Convention, the Government is bound to take effective and time-bound measures to eliminate the sale and trafficking of children for economic and sexual exploitation as soon as possible. **The Committee once again urges the Government to take effective and time-bound measures to establish services for the recovery of child victims from sale and trafficking, and for their rehabilitation and social integration. It requests the Government to provide information on progress made in this regard.**

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

## Angola

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 7(2) of the Convention. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee previously noted information from UNESCO indicating that, despite the problems caused by a particularly long and bloody conflict, Angola managed to triple the number of children enrolled in primary education, which rose from 2 million to 6 million between 2002 and 2013. The Committee nevertheless noted the very low school enrolment rates at all levels, the high drop-out rates in primary education (30 per cent), particularly among girls, and the limited access to quality education in rural areas.

The Committee notes that the Government's report does not provide any new information on this subject. It nevertheless notes that, in the Government's report of 2016 to the United Nations Committee on the Rights of the Child, the net enrolment rate in secondary education rose from 48.7 per cent in 2013 to 51.8 per cent in 2014, and that it was expected to rise to 54.8 per cent in 2015 and 57.5 per cent in 2016 (CRC/C/AGO/5-7, page 31). **While noting the increase in the enrolment rate at the secondary level, the Committee recalls that education is one of the most effective means to prevent the engagement of children in the worst forms of child labour, and therefore requests the Government once again to intensify its efforts to improve the functioning of the education system and to facilitate access to free, quality basic education, particularly for children from poor families, children living in rural areas, and girls. It once again requests the Government to provide information on the measures taken in this regard and the results achieved, particularly with regard to increasing school enrolment and completion rates and reducing drop-out rates in primary education. To the extent possible, this information should be disaggregated by age and by gender.**

*Article 7(2). Effective and time-bound measures. Clause (d). HIV/AIDS orphans and other vulnerable children (OVCs).* The Committee previously noted information from the Government indicating a rise in the number of OVCs in the country. It also noted the Government's indication that a national action plan on OVCs was being developed and that the plan sought to strengthen the capacities of families, communities and institutions to respond to the needs of OVCs and

to expand social protection services and mechanisms for these children. It nevertheless noted the Government's indication in its country progress report to the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) that only 16.8 per cent of households with OVCs receive basic external support.

The Committee notes that the Government's report does not contain any information on this subject. However, it notes that, in Angola, according to estimates made by UNAIDS in 2016, approximately 130,000 children aged 17 years and younger had been orphaned by HIV/AIDS. **Recalling that OVCs are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to take immediate and effective measures, as part of the national action plan on OVCs, to ensure that HIV/AIDS orphans and OVCs are protected from the worst forms of child labour. The Committee once again requests the Government to provide information on the specific measures taken in this respect and on the results achieved, particularly with regard to the percentage of households with OVCs receiving support in the form of services and allowances.**

*Application of the Convention in practice.* In its previous comments, the Committee noted the Government's statement that there are children in Angola who are engaged in the worst forms of child labour, such as those who perform hazardous types of work (in the diamond mines and in the fishing industry), those who work on the streets or even some who are subjected to commercial sexual exploitation. The Government added that, because of its particularly long and difficult-to-monitor border with the Democratic Republic of the Congo, Angolan children were taken from the capital and sent to the Democratic Republic of the Congo and, likewise, Congolese children were taken from Kinshasa and brought to Angola.

The Committee notes that the Government's report does not contain any information on this subject. **The Committee once again expresses its deep concern at the situation of persons under the age of 18 years who are engaged in the worst forms of child labour and therefore urges the Government to intensify its efforts to ensure that children are protected in practice against the worst forms of child labour, particularly the trafficking and commercial sexual exploitation of children, their use for illicit activities, or for hazardous work. It also requests the Government to take the necessary measures to ensure the availability of sufficient data on these issues and to provide information on the nature and scope of, and trends in, the worst forms of child labour and on the number of children covered by measures giving effect to the Convention. To the extent possible, this information should be disaggregated by gender and age.**

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

## Antigua and Barbuda

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1983)**

*Article 3(1) and (2) of the Convention.* *Minimum age for admission to hazardous work and determination of these types of work.* The Committee previously noted the Government's indication that the unions and employers' federation were consulted regarding the activities and occupations which should be prohibited to persons below 18 years of age. It noted that although a recommendation was made, it was not submitted before the National Labour Board, as it was the Government's aim to revamp the occupational health and safety legislation. Thereafter, the Committee noted the Government's statement that the proposed amendments to the provisions of the Labour Code on occupational health and safety have been circulated to Cabinet, but have not yet been adopted. It further noted the Government's indication that technical assistance was sought in relation to new and separate occupational health and safety legislation.

The Committee notes the Government's indication in its report that the National Labour Board is currently reviewing the occupational health and safety legislation. The Government states that it has noted the Committee's comments and that it will act accordingly. The Committee notes with **regret** that the list of hazardous types of work prohibited for children under 18 years of age has still not been adopted. The Committee therefore once again reminds the Government that *Article 3(1)* of the Convention provides that the minimum age for admission to any type of employment or work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of young persons, shall not be less than 18 years. It also reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. **Observing that the Convention was ratified by Antigua and Barbuda more than 30 years ago, the Committee urges the Government to take the necessary measures to ensure that a list of activities and occupations prohibited for persons below 18 years of age is adopted in the near future, in accordance with Article 3(1) and (2) of the Convention. It encourages the Government to pursue its efforts in this regard through amendments to the occupational health and safety legislation, and to provide information on progress made. Lastly, it requests that the Government provide a copy of the amendments to the occupational health and safety legislation once adopted.**

## Argentina

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1996)**

The Committee notes the observations of the Confederation of Workers of Argentina (CTA Workers), received on 11 September 2017, those of the General Confederation of Labour of the Argentine Republic (CGT RA), received on 1 September 2017.

*Article 1 of the Convention. National policy. Application in practice and labour inspection.* In its previous comments, the Committee noted that, according to the CGT RA, the legislation on child labour is not applied in practice by employers, particularly in the agriculture and textile sectors, and that a vast campaign of awareness raising and inspection had been launched to target the offending employers and enterprises. The Committee also noted the National Plan for the Prevention and Elimination of Child Labour 2011–15, the objectives of which included the development of a national system for the compilation of statistical data on child labour and promoting the integration of this information into Government measures, as well as the promotion of technical cooperation between the National Committee for the Eradication of Child Labour (CONAETI) and the Provincial Commissions for the Prevention and Eradication of Child Labour (COPRETI) for the development and integration of objectives at the local level.

The Committee notes the observations of the CTA Workers indicating that child labour is far from being eliminated and reiterating the need to reinforce the inspection system, particularly within the country, to ensure effective compliance with the legislation. The CTA Workers raises the problem of the lack of Government statistics on the child labour situation in the country. The CTA Workers adds that the labour inspection services have not issued any penalties for the crime of child labour, despite the 231 criminal charges brought. The Committee also notes the observations of the CGT RA reporting the adoption by the Government of a National Plan for the Eradication of Child Labour and the Protection of Work by Young Persons (2017–21). However, the CGT RA indicates that the National Plan includes certain shortcomings, and particularly the uncoordinated operation of the COPRETI. The Committee also notes that, according to the CGT RA, there is a lack of coordination between the bodies responsible for detecting child labour and those in charge of dealing with the cases detected. The CGT RA suggests that the National Plan should include a training plan for officers of the justice system to improve their interventions following the detection of cases of child labour.

The Committee notes the Government's indication in its report that it is working with the security forces and other key actors to raise awareness and train them on matters relating to child labour. The Government adds that it is continuing to provide technical assistance to the COPRETI with a view to the development of protocols for the detection of child labour and the restoration of their rights. The Committee notes that, according to the Government, various preventive measures have been introduced, including: (i) centres for young persons; (ii) programmes for centres for the promotion of rights; (iii) technical and financial support for provinces, municipal authorities and non-governmental organizations; and (iv) other specific projects to prevent and eliminate child labour. The Government also reports many activities undertaken between 2014 and 2017, including the preparation of information manuals for employers to inform them concerning the law in force and to prevent child labour. In this respect, the Committee notes with *interest* that, according to the ILO–UNICEF publication on “Child labour in Argentina, public policies and the development of sectoral and local experiments,” between 2004 and 2012, the percentage of children engaged in work between the ages of 5 and 13 years has fallen by 66 per cent, and that there was a fall of 38 per cent for young persons aged 14 and 15. The Committee also notes that, according to the Government, a National Survey of the Activities of Children and Young Persons (EANNA, 2017) is being conducted with a view to understanding the characteristics and extent of child labour in the country. Finally, the Government indicates that, between 2015 and 2017, the labour inspection services identified 102 cases of work by children aged between 10 and 15 years. The Committee notes that these data are disaggregated by age, gender and economic activity, but that the Government does not indicate the penalties imposed. ***The Committee takes due note of the reduction of child labour in the country and requests the Government to continue its efforts for the progressive elimination of child labour. It requests the Government to provide detailed information on the National Plan 2017–21 and the results achieved. The Committee also requests the Government to provide updated statistical data compiled on the basis of the EANNA 2017, and particularly data on the nature, extent and trends of work by children and young persons under 16 years of age. Finally, the Committee requests the Government to indicate the nature and number of convictions, and the types of penalties imposed by the labour inspection services when cases of child labour are detected. To the extent possible, this information should be disaggregated by age and gender.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 4(1) of the Convention. Determination of the list of hazardous types of work.* The Committee notes with *satisfaction* the adoption of Decree No. 1117/2016 determining the list of hazardous types of work prohibited for persons under 18 years of age. The Committee notes that this list includes: work underground, under water, at dangerous heights or in confined spaces; work with certain dangerous or heavy machinery and tools; exposure to hazardous chemicals; work which exposes children or young persons to noise, vibration, extreme temperatures, radiation, high concentrations of humidity or hazardous components; work involving exposure to hazardous biological agents; night work and overtime work; work in construction or involving the handling of asphalt; work with electricity; work in the production or sale of alcohol; and modelling involving eroticized images of children and young persons. ***The Committee requests the***

**Government to provide information on the effect given in practice to Decree No. 1117/2016, including the violations reported and penalties imposed.**

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

## Azerbaijan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1992)**

*Article 2(1) of the Convention.* 1. *Scope of application and the application of the Convention in practice.* The Committee previously observed that although the provisions relating to the minimum age of admission to employment or work in the Labour Code did not appear to apply to work performed without an employment agreement, including self-employment or work in the informal sector, the Government had stated that the Convention constitutes part of the labour legislation in the country, and must therefore be implemented by all employers and private individuals. The Committee also noted the Government's statement during the discussions of the Conference Committee on the Application of Standards in June 2011 that, as of January 2011, 20,000 children were working in agriculture, out of which 5,000 were self-employed. In this regard, the Conference Committee urged the Government to take concrete measures to ensure that the protection envisaged by the Convention was provided to children who work on their own account or in the informal economy. The Committee noted that during the period 2012–13, the Labour Inspection Service inspected 16,887 enterprises in all sectors of the economy, including 431 agricultural enterprises, regardless of ownership and legal form, and identified five cases of violations of the rights of workers under 18 years of age for which a total fine of 5,000 Azerbaijani new manat (AZN) (approximately US\$6,374) were imposed on the employers found guilty. The Committee further noted the Government's indication that the Ministry of Labour and Social Protection and the State Committee on the Family, Women and Children signed a joint action plan to prevent the exploitation of child labour for the period 2013–15, which was being implemented in cooperation with the competent state bodies, non-governmental organizations (NGOs) and social partners. However, the Committee noted the significant number of children involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations. **Noting the absence of information provided in the Government's report in this regard, the Committee once again urges the Government to take measures to strengthen the capacity and expand the reach of the labour inspectorate services to better monitor children working in the informal economy, particularly on cotton, tobacco and tea plantations. It requests that the Government provide information on specific measures taken in this regard, as well as on the results achieved. The Committee also requests the Government to provide information on the number and nature of violations relating to the employment of children and young people detected by the labour inspectorate, especially in agriculture, and the number of persons prosecuted and penalties imposed. Finally, the Committee requests the Government to provide information on the measures implemented within the framework of the joint action plan to eliminate child labour.**

2. *Minimum age for admission to employment or work.* The Committee previously noted that, upon ratification of the Convention, the minimum age of 16 years was specified under *Article 2(1)* of the Convention. However, it noted that section 42(3) of the Labour Code allows a person who has reached the age of 15 years to be part of an employment contract, and that section 249(1) specifies that "persons who are under the age of 15 shall not be employed under any circumstances". In this regard, the Committee noted that pursuant to technical assistance from the ILO, a draft had been developed entitled: "On amendments and adjustments to some legal acts of the Republic of Azerbaijan to give effect to the implementation of the ILO Minimum Age Convention, 1973 (No. 138)", (draft amendments to the labour law) which proposed to amend section 249(1) of the Labour Code to raise the minimum age for admission to employment from 15 years to 16 years of age. The Committee notes with *regret* that the Government does not provide any new information in this regard. **The Committee therefore once again urges the Government to take the necessary measures to ensure the adoption, in the near future, of the amendments to the labour law which will establish a minimum age of 16 years for admission to employment or work in all sectors. The Committee requests that the Government provide information on any progress made in this regard, as well as to provide a copy of the amendments to the labour law, once adopted.**

The Committee is raising another matter in a request addressed directly to the Government.

## Bahamas

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Article 1 of the Convention. National policy.* In its previous comments, the Committee expressed the hope that a national policy on child labour would be elaborated in the near future.

The Committee notes with *regret* an absence of information in the Government's report on this matter. The Committee recalls that, under *Article 1* of the Convention, each member for which this Convention is in force undertakes to pursue 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 to a level consistent with the fullest physical and mental development of young persons. **The Committee therefore requests that the Government take the necessary measures to ensure that a national policy on child labour will be adopted without delay and to provide information on developments in this respect.**

*Article 2(1). Scope of application and labour inspection.* The Committee previously observed that the minimum age for admission to employment, established under section 50(1) of the Employment Act 2001 only applies to formal undertakings whereas the majority of children work in the informal economy. In this regard, it noted the Government's indication that it had initiated the process of hiring additional labour inspectors to conduct the requisite inspection of workplaces in which children may be engaged in labour. **Noting the absence of information in the Government's report on this point, the Committee requests that the Government provide information on the measures taken to adapt and strengthen the labour inspection services in order to ensure that the protection established by the Convention is secured for children working in all sectors, including children working on their own account or in the informal economy.**

*Article 2(2) and (3). Raising the minimum age for admission to employment or work and the age of completion of compulsory schooling.* The Committee previously noted that the minimum age for admission to employment or work specified by the Bahamas at the time of ratification was 14 years. It also noted that section 7(2) of the Child Protection Act establishes a minimum age of 16 years for admission to employment or work. Furthermore, the Committee noted that, by virtue of section 22(3) of the Education Act, the age of completion of compulsory schooling is 16 years. **Noting the absence of information in the Government's report, the Committee once again requests that the Government indicate whether it intends to raise the minimum age for admission to employment or work from 14 years (initially specified) to 16 years in accordance with the Child Protection Act and in accordance with the age of completion of compulsory schooling under the Education Act. If so, the Committee draws the Government's attention to the provisions of Article 2(2) of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee requests that the Government would consider the possibility of sending a declaration of this nature to the Office.**

*Article 3(2). Determination of types of hazardous work.* In its previous comments, the Committee noted that a delegation from the Bahamas attended the ILO Subregional Workshop on the Elimination of Hazardous Child Labour for Select Caribbean Countries in October 2011 which aimed to enhance skills for the preparation of a list of hazardous work through internal consultations and collaboration.

The Committee notes the Government's statement that draft regulations under the Health and Safety at Work Act, which include provisions determining the types of hazardous work prohibited for persons under 18 years of age, have been approved by the tripartite social partners. **The Committee expresses the firm hope that the draft regulations on the list of types of hazardous work prohibited for persons under the age of 18 years will be adopted in the near future. It requests that the Government provide information on any progress made in this regard as well as to supply a copy of the list, once it has been adopted.**

*Article 7. Light work.* The Committee previously noted that section 7(3)(a) of the Child Protection Act 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. The Committee noted the Government's indication that it would undertake to provide information to the Committee on the measures taken or envisaged in respect of provisions or regulations which would determine light work activities and the conditions in which such employment or work may be undertaken by young persons from the age of 12 years.

The Committee notes with **regret** that despite its raising this issue since 2004, the Government has not provided any information on the measures taken or envisaged in this regard. The Committee recalls that *Article 7(1) and (4)* of the Convention provides that national laws or regulations may permit persons *from the age of 12* to engage in light work, which is: (a) not likely to be harmful to their health and development; (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee also recalls that according to *Article 7(3)* of the Convention, the competent authority shall determine what constitutes light work and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. **The Committee urges the Government to take the necessary measures without delay to bring the national legislation in line with the Convention by determining the light work activities that may be permitted to children of 12 years and above and the conditions in which such employment or work may be undertaken by them. It requests that the Government provide information on any progress made in this regard.**

*Application of the Convention in practice.* In its previous comments, the Committee requested that the Government provide information on the manner in which the Convention is applied in practice. **Noting the absence of information on this point in the Government's report, the Committee once again requests that it provide information on the manner in which the Convention is applied in practice, including, for example, statistical data on the employment of children and young persons, especially regarding children working in the informal economy, as well as extracts from the reports of inspection services and information on the number and nature of contraventions reported and penalties applied. To the extent possible, this information should be disaggregated by age and sex.**

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted that subsections (a), (c) and (d) of section 7 of the Sexual Offences and Domestic Violence Act only prohibit the trafficking of persons for the purpose of sexual exploitation. It urged the Government to take immediate measures to prohibit the sale and trafficking of children under 18 for labour exploitation, and to adopt sufficiently effective and dissuasive penalties.

The Committee notes with **satisfaction** that the Bahamas enacted the Trafficking in Persons (Prevention and Suppression) Act in 2008 (Trafficking in Persons Act). The Committee notes that according to section 3(4) of the Trafficking in Persons Act, a person who recruits, transports, transfers, harbours or receives a child under the age of 18 years for the purpose of exploitation (which includes commercial sexual exploitation, forced labour, practices similar to slavery and servitude (section 2)), commits the offence of trafficking in persons. The Committee also notes that according to section 8(1)(c) of the Trafficking in Persons Act, trafficking of persons under the age of 18 years constitutes an aggravating circumstance giving rise to imprisonment for up to ten years. The Committee notes from the Report of the Special Rapporteur of the United Nations Human Rights Council on trafficking in persons, especially women and children of 5 June 2014 (Report of the Special Rapporteur) that girls, mainly from the Dominican Republic, Jamaica and Haiti are trafficked to the Bahamas for commercial sexual exploitation. The Committee

finally notes that the Committee on the Elimination of All forms of Discrimination Against Women (CEDAW), in its concluding observations of August 2012, expressed concern at the absence of effective implementation of the Trafficking in Persons Act and the absence of cases brought before the court since the Act came into force (CEDAW/C/BHS/CO/1-5, paragraph 25(a)). **The Committee requests the Government to take the necessary measures to ensure the effective implementation of the Trafficking in Persons Act, 2008, in particular in ensuring that thorough investigation and robust prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice.**

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee previously noted that the Dangerous Drugs Act does not specifically establish offences related to the use, procuring or offering of a child for the production and trafficking of drugs. It requested the Government to take immediate and effective measures to prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, and to adopt sufficiently effective and dissuasive sanctions.

The Committee notes the absence of information in the Government's report on this point. It notes from the document on the National Anti-Drug Strategy 2012–16 that for more than four decades, drug abuse and illicit trafficking has been of grave concern to the Bahamas and that the illicit trafficking of drugs into and through the Bahamas is a constant and ongoing challenge for the country. **The Committee requests the Government to take the necessary measures without delay to ensure the prohibition of the use, procuring or offering of a child under the age of 18 years for illicit activities, including the production and trafficking of drugs and to adopt appropriate penalties. It requests the Government to provide information on any progress made in this regard.**

*Article 4(1). Determination of hazardous work.* **With regard to the adoption of the list of hazardous types of work prohibited to children under the age of 18 years, the Committee requests the Government to refer to its detailed comments under the Minimum Age Convention, 1973 (No. 138).**

*Article 5. Monitoring mechanisms. Trafficking.* The Committee notes the information contained in the Government's reply of 11 June 2014 to the report of the Special Rapporteur that the Trafficking in Persons Inter-Ministry Committee and the National Task Force are responsible for coordinating and implementing the activities aimed at preventing trafficking in persons, including issues ranging from identification of victims of trafficking to prosecution of alleged traffickers and the Royal Bahamas Police Force (RBPF) is responsible for investigating trafficking in persons cases. The Committee also notes from the Report of the Special Rapporteur that the RBPF have included a training module for newly enlisted personnel, which includes awareness on trafficking in persons, identification of victims and potential victims. According to this report, more than 240 service personnel have received such training. **The Committee requests the Government to provide information on the number of cases of trafficking of children identified by the RBPF, investigations carried out, prosecutions and penalties applied. It also requests the Government to provide information on the activities undertaken by the Inter-Ministry Committee and the National Task Force to combat the trafficking of children and the results achieved.**

*Article 6. Programmes of action. National action plan to combat trafficking in persons.* The Committee notes from the Report of the Special Rapporteur that a national action plan to combat trafficking in persons which is focused on prevention and assistance is being finalized. **The Committee expresses the hope that the national action plan to combat trafficking in persons will be adopted and implemented in the near future. It requests the Government to provide information on the progress made in this regard. It also requests the Government to provide information on its impact on the elimination of the trafficking of children under 18 years for labour or sexual exploitation.**

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Child sex tourism.* The Committee previously noted that children who are engaged in certain activities related to tourism are at risk of being involved in the worst forms of child labour, such as commercial sexual exploitation.

The Committee notes that, in its concluding observations, the CEDAW expressed concern at the number of children involved in prostitution and child pornography and the lack of awareness-raising activities among the actors directly related to the tourism industry about children, and particularly girls, engaged in certain activities related to tourism who are at risk of becoming involved in commercial sexual exploitation (CEDAW/C/BHS/CO/1-5, paragraph 25(c)). **Noting the absence of information in the Government's report, the Committee requests the Government to take effective and time-bound measures to protect children, particularly girls, from becoming victims of commercial sexual exploitation in the tourism sector. It also requests the Government to take measures to raise the awareness of the actors directly related to the tourist industry, such as associations of hotel owners, tourist operators, associations of taxi drivers, as well as owners of bars and restaurants and their employees, on the subject of commercial sexual exploitation. The Committee requests the Government to provide information on the measures taken in this regard and the results achieved.**

*Application of the Convention in practice.* The Committee notes that the Government's report does not contain any information on this point. **Considering that there does not appear to be a mechanism of review of the national child labour situation in the Bahamas, the Committee urges the Government to take the necessary measures to determine the magnitude of child labour in the country and, in particular, the worst forms of child labour. The Committee once again requests the Government to supply copies or extracts from official documents including studies and inquiries and to provide information on the nature, extent and trends of the worst forms of child labour and the number of children covered by the measures giving effect to the Convention. To the extent possible, all information provided should be disaggregated by age and sex.**

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

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

## Bangladesh

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

*Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children.* The Committee previously took note of the Prevention and Suppression of Human Trafficking Act No. 3 of 2012 (Trafficking Act) which provides that the trafficking of children under 18 years for labour and sexual exploitation is punishable by rigorous imprisonment of not less than five years and with a fine of 50,000 takas (approximately US\$603).

The Committee noted that the Trafficking Act provides for the establishment of an Anti-Human Trafficking Offence Tribunal at the district level wherein the offences under this Act shall be tried.

The Committee notes the Government's information in its report that to effectively implement the Trafficking Act, it has formulated three rules in 2017: the Prevention and Suppression of Human Trafficking Rule; the Human Trafficking Suppression Authority Rule; and the Human Trafficking Fund Rule. The Committee also notes the Government's indication that, as of July 2017, there were 2,663 human trafficking cases pending trial and 540 cases under investigation. While the Committee observes that the Government does not provide statistics related to the number of penalties imposed on persons found guilty of child trafficking specifically, it notes that, according to the 2016 UNODC Global Report on Trafficking in Persons, 232 child victims of trafficking were identified by the police between May 2014 and April 2015.

However, in the list of issues of 14 February 2017 in relation to the initial report of Bangladesh under article 40 of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee pointed out that there seem to be numerous acquittals in human trafficking cases for the number of prosecutions (indeed the Government indicates that in 820 cases filed against traffickers, only 15 persons were convicted and sentenced to life imprisonment in 2014 and 2015) (CCPR/C/BGD/1/Add.1, item 12). ***The Committee urges the Government to take the necessary measures to ensure that, in practice, thorough investigations and robust prosecutions are carried out for persons who engage in the trafficking of children, and that sufficiently effective and dissuasive sanctions are imposed. In this regard, the Committee once again requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied by the Anti-Human Trafficking Offence Tribunal for the offence of trafficking in persons under 18 years of age, in accordance with the provisions of the Trafficking Act.***

*Article 5. Monitoring mechanisms. Labour inspection.* In its previous comments, the Committee noted that the Department of Inspection for Factories and Establishments (DIFE) had been expanded by recruiting an additional 262 inspectors, thereby having a total staff of 575 inspectors in 2014.

The Committee notes the Government's information that, as of 2016, a total of 95 cases have been filed by the DIFE against employers having employed children in violation of section 34(1) of the Bangladesh Labour Act 2006 (as amended in 2013), which prohibits the employment of a child under 14 years of age. The Committee notes that, in its report under the Labour Inspection Convention, 1947 (No. 81), the Government provides detailed information on the measures taken to strengthen the capacity of the labour inspectors of the DIFE, including the organization of several training programmes, seminars and workshops. The Government also indicates that the DIFE inspects the ready-made garment (RMG) sector and maintains a database of 4,808 RMG factories, which includes basic information of workers employed in the factories. The Committee further notes that, in its replies to the list of issues of 14 February 2017 in relation to the initial report of Bangladesh under article 40 of the ICCPR (CCPR/C/BGD/1/Add.1, item 14), the Government indicates that the officials of the DIFE also regularly inspect shrimp and dried fish industries, the construction sector, brick factories and tanneries.

The Committee notes, however, that according to the National Child Labour Survey conducted in 2013 and published in 2015, 1.28 million children aged 5 to 17 were found to be engaged in hazardous work. The Survey reveals that hazardous child labour, which is defined as working in one of the types of work listed as hazardous by law or working more than 42 hours per week, is most often found in manufacturing (39 per cent); agriculture, forestry and fishing (21.6 per cent); wholesale and retail (10.8 per cent); construction (9.1 per cent); and transportation and storage (6.5 per cent). The Survey also reveals that children as young as 6 years of age can be found in hazardous work: 32,808 children aged 6–11 were found to be working in hazardous conditions in manufacturing, agriculture, construction, wholesale, and other service activities.

Considering the significantly high number of children working in hazardous conditions, the Committee expresses its ***concern*** at the low number of cases detected by the labour inspectors of the DIFE, and at the fact that those cases do not include children under the age of 18 found in hazardous work. Referring to its 2012 General Survey on the fundamental Conventions (paragraph 632), the Committee recalls that 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 (or only a small number of cases) have been detected by the labour inspectorate. ***The Committee therefore requests the Government to continue taking measures to strengthen the capacity and improve the ability of labour inspectors of the DIFE to detect all children under the age of 18 engaged in hazardous work, and to provide information on the progress achieved in this regard. In addition, the Committee requests the Government to provide information on the inspections carried out and on the number and nature of violations detected by both the DIFE, and other units of labour inspection, involving children under 18 years of age in all sectors where the worst forms of child labour exist.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee previously took due note of the measures taken by the Government, including the adoption of the National Education Policy 2010 in order to ensure compulsory primary education up to grade eight with scope for vocational education as well as to ensure enrolment and retention of students in primary and secondary education.

The Committee notes the Government's information according to which, in order to reach the goals of ensuring inclusive and quality education for all, and of achieving a 100 per cent net enrolment rate for both primary and secondary education, to which the Government subscribed by adopting the Sustainable Development Goals and the Seventh Five Year Plan (2016–20), it is continuing its efforts by undertaking different policies and activities. Among these are the nationalization (shifting to State control) of 26,193 private primary schools, the provision of free primary education, the distribution of free textbooks at primary and secondary levels, and the construction of various infrastructure essential for education. The Committee notes the Government's information that the net enrolment rate in primary education rose from 94.8 per cent in 2010 to 97.94 per cent in 2016 (97.10 per cent for boys and 98.82 per cent for girls).

However, the Committee notes with *concern* that, while the drop-out rate at the secondary level dropped from 55.31 per cent in 2010 to 38.47 per cent in 2016, enrolment at the secondary level has significantly decreased, going down from 72.95 per cent in 2010 to 54.50 per cent in 2016. In addition, the Committee observes that, in its concluding observations of 30 October 2015, the Committee on the Rights of the Child, while welcoming the adoption of the National Education Policy, expresses concern about the limited implementation of the policy due to the lack of adequate resources; the quality of education not being up to national standards; and the persistent drop-out rates due to fees and other costs, such as for books and uniforms; to violence and harassment on the way to and from and at school; and to the lack of sanitation facilities that are separate for girls and boys (CRC/C/BDG/CO/5, para. 66). In addition, while commending the State party for achieving gender parity in primary and secondary education, the Committee on the Elimination of Discrimination against Women, in its concluding observations of 25 November 2016, notes with concern that the number of girls in school drops by half between the primary and secondary levels of education owing, among other things, to child marriage, sexual harassment, the low value placed on girls' education, poverty and the long distances to schools in rural and marginalized communities (CEDAW/C/BGD/CO/8, para. 28(a)). *Considering that education is one of the most effective means of preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to strengthen its efforts to provide access to free basic education for all children, with a particular attention to girls, thereby ensuring enrolment and retention of students both in primary and secondary education. The Committee also requests the Government to continue providing updated statistical data on school enrolment and drop-out rates, disaggregated by age and gender.*

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

## Belgium

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1988)**

*Article 3(3) of the Convention. Admission to hazardous work from the age of 16 years.* In its previous comments, the Committee noted that section 8 of the Royal Order of 3 May 1999 on the protection of young persons at work (Royal Order of 1999) prohibits the employment of young persons under 18 years of age in the hazardous types of work listed under section 8(2) of the Order, namely work involving exposure to agents that are toxic, carcinogenic, cause hereditary genetic alterations, have harmful effects on the foetus during pregnancy, or cause any other chronic harmful effect on human beings. However, section 10 of the Order provides that "young persons at work", defined as any worker aged between 15 and 18 years who is not subject to full-time compulsory schooling, apprentices, trainees and students (section 2), may perform these types of work under the safety conditions set out in this section.

The Committee noted previously that a new Code on well-being at work was in the process of being adopted and that the new Code would consolidate the royal orders respecting the well-being of workers, including the Royal Order of 1999, which was to be amended to raise the minimum age for young persons to work to 16 years in order to ensure that young persons could perform hazardous types of work only from the age of 16 years. However, the Committee noted that the adoption of the new Code on well-being at work had once again been postponed. The Government indicated that, with a view to meeting the requirements of the Convention, the Directorate-General for the Humanization of Work had prepared a draft royal order amending the Royal Order of 1999, separately from the finalization of the Code on well-being at work, but which would be incorporated into the Code subsequently, so that the Order could be signed and published more rapidly. In particular, the amendment of section 10 of the Order was envisaged with a view to raising the minimum age for young persons to be engaged in hazardous types of work to 16 years.

The Committee notes with *satisfaction* the Government's indication in its report that the Royal Order of 1999 has been amended by the Royal Order of 31 May 2016. In its new wording, section 10(1) of the Royal Order of 1999 provides that young persons at work of 16 years of age or over may perform hazardous types of work under the safety conditions set out in the section, in accordance with *Article 3(3)* of the Convention.

## Plurinational State of Bolivia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1997)**

The Committee takes note of the joint observations of the International Organisation of Employers (IOE) and the Confederation of Private Employers of Bolivia (CEPB) received on 1 September 2017.

*Article 2(1) of the Convention. Minimum age for admission to employment or work and labour inspection.* In its previous comments, the Committee noted the observation made by International Trade Union Confederation (ITUC) concerning the adoption by the Government of the new Code for Children and Young Persons of 17 July 2014, which amends section 129 of the previous Code by reducing the minimum age for admission to work for children from 14 to 10 years for own-account workers, and to 12 years for children engaged in an employment relationship, under exceptional circumstances. The ITUC observed that these exemptions from the minimum age of 14 years are incompatible with the exceptions set out in the Convention to the minimum age authorized for light work under the terms of *Article 7(4)*, which does not authorize work by children under 12 years of age. The Committee also noted the ITUC's statement that authorizing children to work from the age of 10 years would inevitably affect their compulsory schooling which, in the Plurinational State of Bolivia, consists of a fixed period of 12 years, that is at least up to the age of 16. The Committee noted the Government's indication that the new exemptions from the minimum age of 14 years, as set out in section 129 of the Code, can only be registered and authorized on condition that the work undertaken is not a threat to the child's right to education, health, dignity and general development.

At the 104th Session of the Conference Committee on the Application of Standards in June 2015, the Government representative indicated that the exceptions to the minimum age for admission to employment set out in the new Code were provisional, with the aim of resolving the problem by 2020. He indicated that the Government was not in violation of the Convention, but was seeking to improve the protection of children engaged in work, and that the Code was an exceptional measure to contribute to the application of the public policies intended to eradicate child labour. In this respect, he referred to the adoption of protection measures for child workers, such as the right to a wage equal to the national minimum wage and to social security, the promotion of the right to education and a working week of 30 hours for young persons between the ages of 12 and 14 years working for a third party, with two hours a day being dedicated to studying. Further, the Ministry of Labour, Employment and Social Welfare was giving effect to the Convention through integrated and inter-sectoral routine and complaint-based inspections conducted by the services for the protection of children and young persons, to highlight cases involving work by children under 14 years of age. The Committee notes that the Conference Committee, while duly noting the positive results of the economic and social policies implemented by the Government, urged it to repeal the provisions of the legislation setting the minimum age for admission to employment or work and to immediately prepare a new law, in consultation with the social partners, increasing the minimum age for admission to employment or work in accordance with the Convention. It also requested that the Government provide the labour inspectorate with greater human and technical resources and to provide training for labour inspectors with a view to adopting a more efficient and concrete approach to the application of the Convention.

The Committee notes the joint observations of the IOE and the CEPB according to which the new Code for Children and Young Persons is the consequence of an incorrect application of Convention No. 138. They specify that this modification was introduced without prior consultation with employers' and workers' organizations and that it runs counter to the minimum age for admission to work of 14 years, as specified by the Government when ratifying the Convention. The IOE and CEPB also indicate that the high level of the informal economy in the country (70 per cent) favours child labour, as it is not subject to labour inspection. They add that there is no child labour in the formal sector. Finally, they indicate that it is necessary for the Government to reinforce the labour inspection services in the formal and informal sectors.

The Committee *deeply deplores* the Government's indication in its report reiterating that the modifications made to section 129 of the Code for Children and Young Persons, which authorizes the competent authority to approve work by children and young persons between the ages of 10 and 14 years in own-account work, and work by children and young persons between the ages of 12 and 14 years for a third party, will remain in place as provisional measures. The Committee once again emphasizes that the objective of the Convention is to eliminate child labour and that it encourages the raising of the minimum age, but does not authorize its reduction once the minimum age has been set. The Committee recalls that the Plurinational State of Bolivia set a minimum age of 14 years when ratifying the Convention, and that the exception to the minimum age for admission to employment set out in section 129 of the Code for Children and Young Persons is not in conformity with this provision of the Convention. The Committee also notes with *deep concern* the distinction made between the minimum age for own-account child workers, which is set at 10 years, and the minimum age for children engaged in an employment relationship, which is 12 years. The Committee noted in its 2012 General Survey on the fundamental Conventions (paragraphs 550 and 551) that it is of the firm view that self-employed children should benefit from at least the same legal protection, especially as many of them work in the informal economy and under hazardous conditions. The Committee finally observes the Government's indication that there are 90 labour inspectors (four more than in 2012). In this respect, the Committee recalls once again that, according to the 2012 General Survey (paragraph 345), the limited number of labour inspectors makes it difficult for them to cover the whole of the informal economy and agriculture. ***The Committee therefore strongly urges the Government to take immediate measures to ensure that section 129 of the Code for Children and Young Persons of 17 July 2014 establishing the minimum age for admission to employment or work, including own-account work, is amended in order to bring this age into conformity with the age specified when ratifying the Convention and with the requirements of the Convention, namely a minimum of 14 years. It also requests that the Government strengthen its efforts to reinforce the capacity of the labour inspection services so as ensure that the protection afforded by the Convention also covers children working in the informal economy.***

*Article 7(1) and (4). Light work.* The Committee previously noted that sections 132 and 133 of the Code for Children and Young Persons of 17 July 2014 allows children under the age of 14 years to work, subject to authorization by the competent authority, under conditions which limit their hours of work, do not endanger their life, health, safety or image, and do not interfere with their access to education. The Committee also noted the conclusions of the Conference Committee, according to which these amendments allow all children under 14 years of age to carry out light work without fixing a lower minimum age for admission to such work.

The Committee notes the Government's indication that sections 131, 132 and 133 of the Code for Children and Young Persons allows children between 10 and 18 years of age to work, subject to the authorization of the competent authority and of parents or guardians, under conditions which limit their hours of work, do not endanger their life, health, safety or image, and do not interfere with their access to education. Although the Government indicates that the Code for Children and Young Persons set a minimum age for the performance of light work, the Committee notes with **deep concern** that this age is set at 10 years. The Committee once again recalls that, under the terms of the flexibility clause contained in *Article 7(1) and (4)* of the Convention, national laws or regulations may permit the employment of persons between 12 and 14 years of age, and not 10 years, in light work which is not likely to be harmful to their health or development and is not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received. **The Committee once again urges the Government to take immediate measures to ensure that sections 132 and 133 of the Code for Children and Young Persons of 17 July 2014 are amended in order to establish a minimum age of 12 years for admission to light work, in accordance with the requirements of Article 7(1) and (4) of the Convention.**

*Article 9(3). Keeping of registers.* In its previous comments, the Committee noted that, under the terms of section 138 of the Code for Children and Young Persons, registers for child workers are required in order to obtain authorization for work. The Committee observed that these registers include the authorization for children between the ages of 10 and 14 years to work.

The Committee notes the Government's indication that Resolution No. 71/2016 created the Information System on Children and Young Persons (SINNA), which registers and contains information on the rights of the child, including information relating to children working on their own account or for a third party. The Committee notes with **regret** that Resolution No. 434/2016 provides for the inclusion in a register of minors under 14 years of age who are engaged in work. It once again draws the Government's attention to its comments concerning *Article 2(1)*, under the terms of which no authorization to work may be granted for children under 14 years of age. It also reminds the Government that, under the terms of *Article 9(3)* of the Convention, national laws shall prescribe the registers which shall be kept and made available by the employer containing the names and ages or dates of birth, duly certified, of persons whom he or she employs or who work for the employer and who are under 18 years of age. **The Committee once again requests that the Government take the necessary measures to bring this provision of the Code for Children and Young Persons into conformity with the Convention on these two points, and to provide recent statistics on child labour, disaggregated by age and gender, in particular with regard to children under 10 years of age, as well as children between the ages of 10 and 12 years, and the ages of 12 and 14 years.**

**The Committee reminds the Government that it may avail itself of ILO technical assistance in order to bring its law and practice into conformity with the Convention.**

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

**[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

The Committee notes the joint observations of the International Organisation of Employers (IOE) and the Confederation of Private Employers of Bolivia (CEPB) received on 1 September 2017.

*Articles 3(a) and 7(2)(a) and (b) of the Convention. Debt bondage and forced and compulsory labour in the sugar cane and Brazil nut harvesting industries, and effective and time-bound measures. Preventing children from being engaged in the worst forms of child labour and providing direct assistance for their removal from child labour and for their rehabilitation and social integration.* In its previous comments, the Committee noted the prevalence and conditions of exploitation of children working in hazardous conditions in sugar cane and nut harvesting plantations. The Committee also noted the Government's corporate incentives programme "*Triple Sello*", under which the provision of certain benefits is conditional on the enterprise demonstrating that it does not practice any form of child labour, including in work related to the harvesting of nuts. The Committee noted that, based on the Plan of Action 2013–17 with UNICEF, a programme had been established in 17 Bolivian nut and sugar cane producing municipalities to provide education assistance to children, and that 3,400 children had been reintegrated into basic education.

The Committee notes the Government's indication in its report that no cases of child labour have been identified in the sugar cane production sector. With regard to the nut production sector, the Government indicates that a tripartite agreement has been signed with the representatives of employers and their workers in the sector, including a clause prohibiting child labour. According to the Government, during the harvest period, labour inspectors undertake inspections to assess the conditions of work, and also keep a special record of cases of children working in the sector. The

Government adds that these inspectors are empowered to impose penalties when they detect violations of labour rules. However, the Committee notes that the Government does not indicate the number of violations identified or the penalties imposed. It also notes with *regret* the absence of information on the effective and time-bound measures taken to prevent children becoming victims of debt bondage or forced labour. ***The Committee once again urges the Government to take effective and time-bound measures to prevent children from becoming victims of debt bondage or forced labour in the sugar cane and Brazil nut harvesting industries, and to remove child victims from these worst forms of child labour and ensure their rehabilitation and social integration. The Committee once again requests the Government to explain the manner in which it ensures that persons using the labour of children under 18 years of age in the sugar cane and Brazil nut harvesting industries, under conditions of debt bondage or forced labour, are prosecuted and that effective and dissuasive sanctions are applied. The Committee requests the Government to indicate how the tripartite agreement signed in the nut production sector will concretely impact on child labour, and to provide a copy of the agreement.***

*Articles 3(d) and 7(2)(a) and (b). Hazardous types of work. Children working in mines. Effective and time-bound measures for prevention, assistance and removal.* The Committee noted previously that over 3,800 children work in the tin, zinc, silver and gold mines in the country. It also noted the awareness-raising and educational measures and the economic alternatives offered to the families of children working in mines. The Committee noted that, according to the Government's statistical data, only 8 per cent of the inspections carried out in mines found children under the age of 12 years working there. However, the Committee also noted that around 2,000 children were identified in 2013 in labour activities in traditional artisanal mines in the municipalities of Potosí and Oruro. The Committee further noted that 145 young persons below 18 years of age were found working in mines in Cerro Rico in June and July 2014. Finally, the Committee noted the Government's indication that it intended to formulate a national policy for the eradication of child labour within the next two years.

The Committee notes the joint observations of the IOE and the CEPB that it is necessary for the Government to adopt a national plan for the eradication of child labour after consulting the social partners.

The Committee notes that, according to the Government, the Ministry of Labour has taken action directed at employers in the mining sector to discourage them from using child labour. The Government also refers to the establishment by the Ministry of Labour of Integrated Mobile Offices (*Oficinas Móviles Integrales*) in remote areas where the presence of the worst forms of child labour is suspected, including in mining areas. However, the Committee notes with *regret* that the national policy for the eradication of child labour has not yet been adopted. ***The Committee therefore requests the Government to take the necessary measures for the adoption in the very near future of the national policy for the eradication of child labour and to provide information on this subject. It also requests the Government to indicate the effectiveness of the action undertaken by Integrated Mobile Offices in preventing children from being engaged in hazardous work in mines, their removal from such work and their rehabilitation.***

*Article 5. Monitoring mechanisms and application in practice.* The Committee previously noted the lack of resources of labour inspectors and the difficulties encountered in gaining access to plantations in the Chaco region. It also noted that the most recent information provided by the Government merely repeated the statistics provided previously indicating that only 5 per cent of the inspections carried out had identified children under 14 years of age engaged in work.

The Committee notes that, according to the Government, the labour inspectorate has six inspectors specialized in the progressive elimination of child labour. It adds that inspectors supervise labour standards relating to all fundamental rights. The Government adds that in remote areas where there are no Ministry of Labour offices, it has established Integrated Mobile Offices composed of labour inspectors with competence for the exhaustive supervision of the application of labour standards. The Committee notes that 265 inspections relating to child labour were carried out in 2015, all of which were undertaken by the Mobile Offices. The Committee also notes the Government's indication in its report on the application of the Minimum Age Convention, 1973 (No. 138), that studies and analysis have been carried out of the situation of children working in domestic service, mines, on their own account, in sugar cane fields and those engaged in hazardous types of work, but it notes that the Government has not provided the findings of these studies. The Government indicates that the analyses in the studies are helping in the formulation of a plan of action which will be coordinated by municipal authorities and government departments. ***The Committee requests the Government to continue providing updated statistics on the results of routine and unscheduled inspections, including inspections carried out by inspectors specialized in child labour. It also requests the Government to ensure that these statistics clearly indicate the nature, scope and trends of the worst forms of child labour, particularly in the sugar cane and Brazil nut harvest, and in the mining sector. Finally, the Committee requests the Government to provide information on the adoption of the plan of action referred to above.***

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

## Bosnia and Herzegovina

### Minimum Age Convention, 1973 (No. 138) (ratification: 1993)

*Article 3(2) of the Convention. Determination of hazardous work.* 1. *Federation of Bosnia and Herzegovina (FBiH).* The Committee previously noted the Government's statement that it was in the process of adopting a new Labour Law.

The Committee notes the Government's information in its report according to which, pursuant to section 57 of the new Labour Law of the FBiH, an underage person may not be assigned to any physically demanding work, underground or underwater work, or any other work likely to create a hazard or increased risk to their life, health, development or morale, taking into account their mental and physical characteristics. A by-law shall be adopted to define the types of work referred to in section 57. However, the Government indicates that this by-law has not yet been adopted. ***The Committee urges the Government to take the necessary steps to ensure, pursuant to section 57 of the new Labour Law, that a list of activities and occupations prohibited for persons below 18 years of age is adopted, in accordance with Article 3(2) of the Convention. It requests that the Government provide information on any progress made in this regard.***

2. *Republika Srpska.* The Committee previously expressed the hope that the Government would take the necessary measures to ensure the inclusion, in the new Labour Law, of a provision authorizing the competent authorities to draw up a list of types of hazardous work prohibited to persons below 18 years of age and to ensure the adoption of such a list.

The Committee notes that section 103(1) of the new Labour Law of Republika Srpska, which entered into force in January 2016, provides that workers younger than 18 years of age may not be assigned jobs that pose an increased risk, or involve physically demanding work, underground or underwater work, or any other activities that may represent an increased risk to their life, health, or physical and psychological development. Pursuant to paragraph 2 of section 103, the activities referred to in paragraph 1 shall be stipulated by the Minister in a regulation. The Committee notes with *satisfaction* that the Regulation on jobs which may not be assigned to juvenile workers was adopted, and entered into force on 18 October 2016.

3. *Brčko District.* Following its previous comments, the Committee notes the Government's information that section 41 of the Labour Law provides that underage persons may not be assigned any dangerous or demanding work, underground or underwater work, or any other work likely to pose a hazard or jeopardize their life, health, or physical development or morale, and that these types of work shall be regulated under collective agreements. The Government further indicates that a new Labour Law for the Brčko District is in the process of adoption, in consultation with the organizations of workers and employers. ***The Committee requests that the Government provide information on the progress made in adopting the list of types of work prohibited to children and young persons under 18 years of age, as well as on the types of work prescribed by collective agreements. It once again asks the Government to communicate copies of these lists as soon as they have been determined.***

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

## Botswana

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

*Article 4(1) of the Convention. Determination of hazardous work.* The Committee previously noted the Government's statement that the Tripartite Labour Advisory Board had prepared a draft list of hazardous types of work which was being circulated to the relevant ministries for their endorsement. The Committee accordingly urged the Government to pursue its efforts to ensure the adoption, in the near future, of the list determining the types of hazardous work prohibited to persons under 18 years of age.

The Committee notes the Government's indication that the list of types of hazardous work prohibited to young persons has not yet been finalized. ***The Committee expresses the firm hope that the list, determining the types of hazardous work prohibited to children under 18 years of age, will be adopted in the very near future. It requests the Government to provide a copy of this list once it has been adopted.***

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour. Child victims of commercial sexual exploitation.* In its previous comments, the Committee noted the Government's statement that prevention and withdrawal efforts related to child commercial sexual exploitation were ongoing, and that the two implementing agencies, namely Humana People to People and Childline Botswana, have been engaged to work in this area. The Committee requested the Government to strengthen its efforts, in collaboration with the ILO-IPEC, to provide the necessary and appropriate direct assistance for the removal of child victims of commercial sexual exploitation, and to ensure their rehabilitation and social integration.

The Committee notes the Government's statement that children engaged in commercial sexual exploitation are identified as children in need of protection under the Children's Act of 2009. It also notes that, according to section 54 of the Children's Act, the Minister shall develop programmes and rehabilitative measures, including community-based counselling and other forms of psychological support to reintegrate abused or exploited children. ***The Committee requests the Government to take effective and time-bound measures to remove children engaged in commercial sexual exploitation, and to provide the necessary and appropriate direct assistance to children and young persons who have been victims of this worst form of child labour, pursuant to section 54 of the Children's Act. It also requests the Government to provide information on the number of child victims of commercial sexual exploitation who have been effectively removed, rehabilitated and socially reintegrated as a result of the measures implemented.***

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

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

## Burkina Faso

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the last National Survey of Child Labour in Burkina Faso (ENTE) published in 2008, child labour affected 41.1 per cent of children between 5 and 17 years of age in Burkina Faso, a total of 1,658,869 working children. Nearly 30 per cent of children between 5 and 9 years of age and 47.6 per cent of children between 10 and 14 years of age worked in various economic sectors. In this regard, the Committee noted that most children worked in agriculture and livestock farming, and those in the most at-risk groups were employed as apprentices in the informal economy in small-scale gold mines, and girls in particular were employed as domestic workers, vendors or apprentices. The Committee noted that on 15 February 2012 the Government adopted the National Action Plan against the Worst Forms of Child Labour in Burkina Faso 2011–15 (PAN/PFTE), drawn up in cooperation with ILO–IPEC, with the general objective of reducing the incidence of child labour by 2015.

The Committee notes the Government's indications in its report that, as part of the implementation of the PAN/PFTE, a total of 126 inspections were conducted in 2013 in relation to child labour, of which 104 were in small-scale gold mines, ten in agriculture and 12 in the informal economy. Through these inspections, a total of 1,411 children were found to be working, including 1,195 in small-scale gold mining and 215 in the informal economy (carpentry, engineering, tailoring, small-scale trading, etc.). The Government also indicates that in 2013 a total of 50 capacity-building sessions were organized for parties involved in combating child labour; 107 awareness-raising meetings were held providing outreach to some 30,000 persons; and the PAN/PFTE National Coordinating Committee (CNC) was established. The Government also indicates that it has undertaken a number of capacity-building actions for the labour inspectorate relating to the inspection of child labour, including the formulation and validation of a module on child labour for incorporation in the training given to labour inspectors and supervisors, and also the establishment of a training plan for labour inspectors covering various fields, including action against child labour.

The Committee notes that the PAN/PFTE is no longer in force. However, it notes the information provided by the Government in its report on the Worst Forms of Child Labour Convention, 1999 (No. 182), to the effect that the new National Economic and Social Development Plan 2016–20 (PNDES) gives priority status to the combating of child labour. Strategic objective No. 4 of the PNDES seeks to promote decent employment and social protection for all, particularly young persons and children, with one of the expected outcomes being to reduce the proportion of children in the 5–17 age group involved in economic activities from 41 per cent in 2006 to 25 per cent in 2020. ***The Committee urges the Government to continue its efforts to ensure the progressive elimination of child labour. It requests that the Government provide detailed information on the impact of the PNDES and all other measures with regard to the number of working children under 15 years of age who have thus been able to enjoy the protection granted by the Convention, particularly those working in the informal economy. The Committee also encourages the Government to continue with capacity-building measures for the labour inspectorate so that it can monitor child labour, particularly in the informal economy. Lastly, the Committee encourages the Government to take the necessary steps to ensure the availability of adequate, up-to-date information on child labour, including recent statistics, disaggregated by gender and age, relating to the nature, extent and trends of work done by children and young persons who are under the minimum age specified by the Government at the time of ratification, and extracts from reports of the inspection services.***

*Articles 3(2) and 9(1). Determination of types of hazardous work and penalties.* In its previous comments, the Committee noted that, according to the findings of the ENTE, out of a total of 1,658,869 working children, 39.3 per cent were forced to perform harmful activities and 35.8 per cent were engaged in work which was classified as hazardous. The Committee noted that the Government had adopted Decree No. 2009-365/PRES/PM/MTSS/MS/MASSN of 28 May 2009 determining the list of hazardous types of work prohibited for children under 18 years of age.

The Committee notes the Government's statement that the list of hazardous types of work has since been revised and that new Decree No. 2016-504/PRES/PM/MFPTPS/MS/MFSNF determining the list of hazardous types of work in Burkina Faso (Decree No. 2016-504) was adopted on 9 June 2016. Under section 8 of this Decree, any person committing an offence constituting one of the worst forms of child labour shall be punished according to the terms of section 5 of Act No. 029-2008/AN of 15 May 2008 combating trafficking in persons and similar practices, which provides for imprisonment of ten to 20 years for offenders. ***Noting with concern the large number of children engaged in hazardous types of work in Burkina Faso, the Committee requests that the Government take the necessary steps to ensure the effective application in practice of Decree No. 2016-504. The Committee requests that the Government supply detailed information in this regard, including statistics on the number and nature of violations reported, the number and nature of accidents and injuries related to these violations, and the criminal penalties imposed.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Articles 3(a) and (d) and 7(1) of the Convention. Sale and trafficking of children and hazardous work. Penalties.* In its previous comments, the Committee noted the considerable extent of internal and cross-border trafficking of children for the exploitation of their labour. The Committee also noted that, in its 2013 concluding observations under the Optional

Protocol on the sale of children, child prostitution and child pornography, the Committee on the Rights of the Child expressed its concern about the strikingly low number of prosecutions relating in particular to the practice of *confiage* (placement of rural children in urban households mainly for domestic work) which, in many cases, amounts to the sale of children. The Committee asked the Government to take the necessary steps to ensure that criminal penalties that are sufficiently effective and dissuasive are imposed on the perpetrators of trafficking in children.

The Committee notes the Government's indications in its report that 42 individuals have been identified as suspects under the terms of Act No. 029-2008/AN of 15 May 2008 on combating the trafficking of persons and similar practices. Of the 42 suspects, ten have been convicted and sentenced by the courts. However, the Committee notes that the United Nations Human Rights Committee, in its concluding observations of 17 October 2016, expressed continuing concern at human trafficking for sexual exploitation or forced labour in Burkina Faso (CCPR/C/BFA/CO/1, paragraph 35). In this respect, the Committee notes the Government's indication in its report on the Forced Labour Convention, 1930 (No. 29), that the national report for 2015 on the trafficking of children quotes the figure of 1,099 children who are suspected victims of trafficking, and the partial figures of the national report for 2016, which is being drawn up, indicate 1,416 child victims of trafficking. The Committee observes that, in light of the information provided by the Government, the figures on prosecutions and convictions remain low. ***The Committee therefore strongly encourages the Government to step up its efforts to ensure that Act No. 029-2008/AN of 15 May 2008 on combating the trafficking of persons and similar practices is implemented effectively. In this regard, it urges the Government to take the necessary steps to strengthen the capacities of law enforcement bodies to combat the sale and trafficking of children under 18 years of age, including by means of training and adequate resources. The Committee also requests the Government to take the necessary steps to ensure that all persons responsible for the trafficking of children are the subject of thorough investigation and robust prosecution, and that sufficiently effective and dissuasive penalties are imposed in practice. It further requests the Government to continue providing detailed information on the number of investigations, prosecutions, convictions and criminal penalties imposed.***

*Article 6. Plan of action and application of the Convention in practice. Sale and trafficking of children.* The Committee previously noted that the drafting of the National Action Plan to Combat Trafficking and Sexual Violence against Children in Burkina Faso (PAN/LTVS), which sets out clear strategies for combating the trafficking and sexual exploitation of children, had been suspended pending the results of a national study for evaluating action against trafficking in children, which was being finalized.

The Committee notes with *regret* the Government's indication that the situation is unchanged as regards the drafting of the PAN/LTVS and the implementation of the national evaluation study. ***The Committee therefore urges the Government to take the necessary steps to ensure that the national study for evaluating action against trafficking in children is conducted and the PAN/LTVS is drafted and adopted as soon as possible, and requests it to provide information on progress made in this respect, including the results of the study and those relating to the implementation of the PAN/LTVS.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour. Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. Sale and trafficking of children.* In its previous comments, the Committee noted that the Government, through the Ministry of Social Action and National Solidarity (MASSN), was conducting awareness-raising activities for the main parties affected by the sale and trafficking of children and that victims of trafficking are catered for in transit centres, where they are provided with food, clothing, medical and psychosocial care and, where necessary, psychological support.

The Committee notes the Government's indication that actions in the areas of prevention and suppression of trafficking and the protection and reintegration of victims have been conducted in Burkina Faso, resulting in the interception of, and provision of care for, a total of 1,099 children (563 boys and 536 girls) who had been identified as actual, suspected or potential victims of trafficking. ***The Committee strongly encourages the Government to pursue its efforts to prevent children under 18 years of age from becoming victims of trafficking for economic or sexual exploitation and to remove child victims of sale and trafficking and ensure their rehabilitation and social integration. It requests the Government to continue providing information on the measures taken in this respect and on the results achieved.***

*2. Children working in small-scale gold mines in West Africa.* In its previous comments, the Committee noted the project conducted in partnership with UNICEF concerning child labour in small-scale mines and quarries, in the context of which a study had been undertaken on child labour in small-scale gold mines and quarries in five regions of the country. The study showed that about one third of the population at the 86 small-scale gold mines were children, of whom the total number was 19,881 (51.4 per cent boys and 48.6 per cent girls). The children were used in all forms of mining operations, such as work in mine galleries, dynamiting of rocks, rock breaking, crushing and sieving, selling food and water, and hauling minerals to sheds.

The Committee notes with *regret* that the Government does not provide any information on the measures taken to combat child labour in small-scale gold mines in Burkina Faso and on the number of children who have been removed from work in such mines. ***Recalling that, under the terms of Article 1 of the Convention, the Government must take immediate and effective measures to ensure the eradication of the worst forms of child labour, the Committee urges the***

**Government to take time-bound measures to remove children from the worst forms of labour in small-scale gold mines and ensure their rehabilitation and social integration. It urges the Government to provide detailed information on the progress made in this respect and on the results achieved.**

*Clause (d). Identifying children at special risk. Children in street situations.* Further to its previous comments, the Committee notes that the Human Rights Committee, in its concluding observations of 17 October 2016, expressed concern at the extent and persistence of the use of children for begging (CCPR/C/BFA/CO/1, paragraph 35). Moreover, the Committee notes the Government's statement that a targeted public census was carried out in December 2016 in the 49 urban districts of the country, resulting in the identification of 9,313 children in street situations (7,564 boys and 1,749 girls). The Government indicates that a care programme is being drawn up and action is taking place in the meantime to reintegrate children in families or place them in apprenticeships. ***The Committee strongly encourages the Government to pursue its efforts and requests it to continue providing information on the number of children in street situations who have been protected against the worst forms of child labour and rehabilitated and socially reintegrated as part of the various measures taken to this end. The Committee also requests the Government to indicate any other effective and time-bound measures taken to prevent children under 18 years of age from becoming victims of forced or compulsory labour, such as begging, and to remove them from such situations and ensure their rehabilitation and social integration.***

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

## Burundi

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Article 2(1) of the Convention. Scope of application.* In its previous comments, the Committee noted the indication by the International Trade Union Confederation (ITUC) that child labour constitutes a serious problem in Burundi, particularly in agriculture and informal activities in urban areas. The Committee also noted that section 3 of the Labour Code, in conjunction with section 14, prohibits work by young persons under 16 years of age in public and private enterprises, including agricultural undertakings, where such work is carried out on behalf of and under the supervision of an employer. The Committee further noted the Government's indication that the question of extending the application of the labour legislation to work in the informal sector was to be the subject of tripartite discussions during the revision of the Labour Code.

The Committee notes the lack of information on this matter in the Government's report. However, it observes that it has been raising this issue since 2005. ***The Committee again expresses the firm hope that the Government will take the necessary steps to extend the scope of application of the Convention to work performed outside an employment relationship, particularly in the informal economy and in agriculture. The Committee again requests that the Government provide information in this respect.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted the ITUC's indications that the war had undermined the education system through the destruction of many schools and the death or abduction of a large number of teachers. The Committee further noted that, according to a UNESCO report of 2004 relating to data on education, Legislative Decree No. 1/025 of 13 July 1989 reorganizing education in Burundi did not provide for free and compulsory primary education. Entry into primary education was around the age of 7 or 8 years and lasted six years. Children therefore completed primary education around the age of 13 or 14 years and then had to pass a competition to enter secondary education. The Committee also noted that, since the adoption of the Constitution of 2005, basic education was free of charge and the number of children attending school had tripled. The Committee asked the Government to indicate the age of completion of compulsory schooling and the provisions of the national legislation which determine this age.

The Committee notes the lack of information on this issue in the Government's report. The Committee observes that the Government has adopted a sectoral plan for the development of education and training (2012–20), which recommends improvements to preschool education through support to communities and the development of occupational training through the establishment of centres for the teaching of trades. It also notes the "PASEC2014: performance of the education system in Burundi" report, according to which primary education has also seen a big increase in pupil numbers, rising from 740,850 in 2000 to 2,117,397 in 2014.

Furthermore, the Committee notes Act No. 1/19 of 10 September 2013 establishing the structure of primary and secondary education, which has strengthened core education by increasing it from six to nine years of schooling, from the age of 6 years. In this regard, the Committee notes that, according to section 35 of the Act of 2013, a child who starts school at the age of 6 years completes compulsory schooling at the age of 15 years, one year before the minimum age for admission to work, which is 16 years (sections 3 and 14 of the Labour Code). The Committee therefore recalls that it is necessary to link the age for admission to employment or work to the age of completion of compulsory schooling. 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 (see General Survey of 2012 on the fundamental Conventions, paragraph 371). The Committee therefore considers it important to raise the age of completion of compulsory education to coincide with that of the minimum age for admission to employment or work, as provided for in

Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***The Committee strongly urges the Government to take the necessary steps to ensure free and compulsory education for all children up to the minimum age for admission to employment, which is 16 years, as a means of combating and preventing child labour. The Committee requests the Government to take steps to increase the school attendance rates of children under 16 years of age and to provide information on progress made in this respect.***

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

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)***

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of children for prostitution.* In its previous comments, the Committee noted the indication by the Trade Union Confederation of Burundi (COSYBU) that the extreme poverty of the population induced parents to allow their children to engage in prostitution. It noted that, even though the national legislation prohibits this worst form of child labour, the use, procuring or offering of children for prostitution remains a problem in practice. The Committee also referred to the Conference Committee on the Application of Standards, which observed in its 2010 conclusions that although the law prohibits the commercial sexual exploitation of children (sections 512 and 519 of the Penal Code), this issue remains an area of serious concern in practice. The Committee asked the Government to provide information on the number and nature of violations reported and criminal penalties applied.

The Committee notes the Government's indication, in its report, that a number of measures have been put in place to prevent the engagement of children in prostitution, including: (i) the establishment of a police unit for the protection of minors and morals; and (ii) free primary school education and the setting up of school canteens. The Committee takes note of the Government's indication that the Ministry of Public Administration, Labour and Employment, in collaboration with UNICEF, sponsored a rapid assessment study on the sexual and commercial exploitation of children, published in 2012 (2012 study). Noting that the Government does not provide more recent data, the Committee notes with ***concern*** that, according to this study, children in fishing areas, particularly Rumonge and Makamba in the south of the country, are handed over to prostitution by adults (p. 20). It also notes that, according to this study, nightclubs, guest houses and other similar establishments proliferate everywhere. They provide "predators" with a meeting place and rooms for their use. In border areas, particularly those adjoining Tanzania, sex tourism targeting children is flourishing. Cases of sex tourism practised by truck drivers in transit and nationals of other countries have also been reported in the study (pp. 64 and 69). ***The Committee urges the Government to take immediate and effective steps as a matter of urgency to ensure that persons who use, procure or offer a child under 18 years of age for prostitution are prosecuted and that sufficiently effective and dissuasive penalties are applied in practice. It requests the Government to provide information on the number and nature of violations reported and criminal penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Commercial sexual exploitation.* In its previous comments, the Committee asked the Government to provide information on the number of child victims of commercial sexual exploitation who had effectively been removed from this situation, rehabilitated and socially integrated, particularly further to the implementation of the National Action Plan for the elimination of the worst forms of child labour, which was drawn up in collaboration with ILO-IPEC for the 2010–15 period.

The Committee notes the Government's indication that the 2012 study reveals that potential or actual child victims of commercial sexual exploitation are predominantly girls who are orphans or separated from their families who have come to the major cities to be employed as domestic workers. The Government also indicates that, of 307 children questioned, 92 of them (30 per cent) said they were victims of commercial sexual exploitation, whereas 215 of them (70 per cent) said they had witnessed it. The Committee notes with ***deep concern*** that the survey conducted as part of the 2012 study reveals that children from all target categories (children in prison, street children, child domestic workers, schoolchildren, displaced or refugee children) are victims of commercial sexual exploitation (p. 50). According to the study, the perpetrators are mainly persons offering financial or material reward, particularly shopkeepers, mine operators, foreigners in transit and soldiers. The Committee notes that, in its conclusions, the 2012 study recommends that the Government adopt a number of measures, including: (i) conducting awareness-raising and training campaigns for the judiciary and the general public, and also for teachers, social workers, medical staff, the police and the armed forces; (ii) combating impunity and strengthening the role of child protection committees; and (iii) drawing up fast-track education programmes with a view to promote the return to school of adolescent mothers and children who are victims of commercial sexual exploitation. ***The Committee urges the Government to intensify its efforts to identify and protect child victims of commercial sexual exploitation, and to take the necessary steps to ensure that identified victims are directed to appropriate services for their rehabilitation and social integration. The Committee requests the Government to provide information on the results achieved.***

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

## Cambodia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee took note of the Government's efforts to coordinate plans of action and cooperate with the social partners to eliminate child labour in the country. It noted, however, that according to the Cambodia Labour Force and Child Labour Survey of 2012, of the estimated 755,245 economically active children in Cambodia, 56.9 per cent (429,380) were engaged in child labour in violation of the Convention, 55.1 per cent (236,498) of which were engaged in hazardous labour. Of those children engaged in hazardous labour, approximately 5.3 per cent were children aged 5–11 years, 15.8 per cent were children aged 12–14 years, and 42 per cent were children aged 15–17 years. The Committee expressed its concern over the significant number of children below the minimum age for admission to employment who were working in Cambodia, including in hazardous work.

The Committee notes the Government's information in its report that the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MoSALVY) is reinforcing and strengthening its efforts to combat all forms of child labour. The Committee notes with *interest* the Government's information that a new National Plan of Action on the Reduction of Child Labour and Elimination of the Worst Forms of Child Labour was adopted for 2016–25 (NPA–WFCL). It notes the Government's indication that the NPA–WFCL, along with the Decent Work Country Programme (2016–18) and other national policies, form the roadmap for the elimination of all forms of child labour. The Government adds that the National Committee for Combating Child Labour (NCCL), which is newly established and whose mandate extends beyond that of the former Sub-national Committee on Child Labour, is an effective coordinating and inter-ministerial body led by the Ministry of Labour and Vocational Training (MoLVT) that monitors the effective implementation of policies and laws, and increases the awareness of the public regarding the issues surrounding child labour.

Finally, the Committee notes that, in collaboration with the ILO, a project on expanding the evidence base and reinforcing policy research for scaling-up and accelerating action against child labour 2010–17 (Child Labour Data project) aims to promote generating data on child labour and to effectively use this data in the design and revision of comprehensive national policies and programmes aimed at addressing child labour by improving livelihoods. *The Committee encourages the Government to continue to strengthen its efforts, including within the framework of the NPA–WFCL and the Decent Work Country Programme, to eliminate child labour, particularly in hazardous work, and to provide information on the results achieved. The Committee also requests that the Government continue to provide any updated statistical information on the employment of children and young persons that is obtained as a result of the Child Labour Data project.*

*Article 2(1). Scope of application and labour inspection.* 1. *Children working in the informal economy.* In previous comments, the Committee noted that the Government had drafted amendments to Cambodian labour law to ensure the application of the minimum age for admission to all types of work outside an employment relationship, including self-employment. It also noted that the MoLVT had developed new administrative orders (*Prakas*) on child labour in tobacco and other agricultural sectors. The Government also indicated that the MoLVT was seeking technical and financial assistance to conduct research concerning the costs and benefits of further extending the minimum working age to informal economic sectors.

The Committee notes the Government's statement in its report that, with regard to the minimum age for employment or work, the Labour Law applies to all working children except those working in the domestic sector, regardless of whether they have a formal or informal employment relationship. However, the Committee observes that, according to section 1 of the Labour Law, the law "governs relations between employers and workers resulting from employment contracts". Section 3 provides that a worker is a person "who has signed an employment contract in return for remuneration, under the direction and management of another person". Therefore the Committee observes that the Labour Law does not apply to workers working on their account or in the informal economy. The Committee nevertheless notes the Government's information that the MoLVT created, in 2015, a Commission in charge of drafting and amending legislation and regulations [(MoLVT Law Commission)] in the area of labour law. The Commission is currently taking measures to collect information on the application of labour laws and regulations in force, with the aim of improving working conditions and ensuring better protection of children in the labour market.

The Committee recalls that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not there is a contractual employment relationship and whether or not the work is remunerated. In this regard, referring to the 2012 General Survey on the fundamental Conventions (paragraph 407), the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors. The Committee therefore takes due note of the Government's information that the MoLVT has established standardized inspection guidelines, i.e. adopted a labour inspection checklist, to increase the effectiveness of child labour law enforcement and to focus on monitoring and inspecting cases of child labour. *The Committee expresses the hope that, in strengthening the capacity of labour inspectors with a view to increasing their effectiveness in monitoring child labour, the situation of children working on their own account or in the informal economy will also be covered. In this regard, the Committee requests the Government to continue to adapt and strengthen the labour*

*inspection services in order to ensure that the protection established by the Convention is secured for children working in these sectors, and to provide information on the results achieved.*

2. *Child domestic workers.* The Committee previously noted that, by virtue of section 1(e), the Labour Law does not apply to domestic workers or household servants, who are defined as workers who are engaged to take care of the homeowner or of the owner's property in return for remuneration. It noted that children, primarily girls between the ages of 7 and 17 years, working in domestic service in third-party homes where they are particularly vulnerable to hazardous work, were in need of protection. In this regard, the Committee took note of the project funded by the US Department of Labor which aimed to extend the protection of the Convention to domestic workers and household servants under the minimum age for work.

The Committee notes with *concern* that the minimum age for employment or work still does not apply to domestic workers and household servants. It notes the Government's indication that it strongly believes that, following the creation of the MoLVT Law Commission, new legal instruments will be adopted and promulgated in order to provide effective and full protection to all working children. ***The Committee urges the Government to take the necessary measures, through the MoLVT Law Commission or otherwise, to extend the protection of the Convention to domestic workers and household servants under the minimum age for admission to work. It requests that the Government provide information on the progress made in this regard.***

*Article 2(3). Compulsory schooling.* In its previous comments, the Committee noted the information provided by the Government that "schooling is compulsory for nine years and primary and secondary schools are free" (section 68 of the Constitution and Royal Decree No. NS/RKT/0796/52 dated 26 July 1996). The Committee noted that, in accordance with the Cambodian education system, children started school at 6 years of age and completed schooling at 15 years of age.

The Committee notes, however, while children begin schooling at 6 years of age and basic education lasts for nine years, the provisions of the Education Law of 2007 indicate that while basic education is free, it is not compulsory. The Education Law provides that citizens have the right to access education for at least nine years free of charge (section 31), but that parents only have the obligation to enrol their children in grade 1 of the general education programme at the age of 6 (section 36). Referring to the General Survey of 2012 (paragraph 369), 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. ***The Committee therefore urges the Government to take the necessary measures to implement compulsory education, up to the minimum age for admission to employment.***

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

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2006)***

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children and penalties.* The Committee previously noted the statement of the International Trade Union Confederation (ITUC) that children in Cambodia were exposed to trafficking for sexual and labour exploitation. Cambodian girls and ethnic Vietnamese girls from rural areas were trafficked to work in brothels, massage parlours and salons. Children from Vietnam, many of whom were victims of debt bondage, travelled to Cambodia and were forced into commercial sex. Moreover, corruption at all levels of the Cambodian Government continued to severely limit the effective enforcement of the Law on suppression of human trafficking and sexual exploitation. The Committee noted that, in its conclusions adopted at the 104th Session of the Conference Committee on the Application of Standards in June 2015, the Conference Committee urged the Government to effectively enforce anti-trafficking legislation.

The Committee notes the Government's information in its report that it is taking measures to ensure that all perpetrators of child trafficking, including complicit government officials, are subjected to investigations and prosecutions. The Government indicates that, according to the 2016 annual report on combating human trafficking, six cases of illegal removal of minors were identified with six suspects arrested and 30 victims rescued, and 25 cases of child sexual exploitation were identified with 25 suspects arrested and 61 victims rescued. In addition, the Government indicates that all cases of trafficking of children were processed through legal procedures and trials. While the Government informs that 138 cases of human trafficking were prosecuted and 103 suspects were convicted and imprisoned, it does not provide specific statistics regarding child trafficking. ***The Committee strongly encourages the Government to continue taking measures aiming to ensure that the Law on Suppression of Human Trafficking and Sexual Exploitation is effectively applied. It also encourages the Government to take the necessary measures to strengthen the capacity of law enforcement agencies, including through the allocation of financial resources and adequate training, to combat the sale and trafficking of children under 18 years of age, and to provide information on the progress made in this regard. It further requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied, specifically in cases of child trafficking for labour or sexual exploitation.***

*Articles 3(d), 4(1) and 5. Hazardous work and monitoring mechanisms.* 1. *Hazardous work in the garment and footwear sectors.* The Committee previously noted ITUC's allegations that children, particularly girls, worked long

shifts even during the night, often with dangerous machinery, in garment and shoe factories. In this regard, the Committee noted that, the Conference Committee, in its conclusions adopted in June 2015, urged the Government to increase its efforts on preventing children from being exposed to the worst forms of child labour, including through increased labour inspections in the formal as well as in the informal economy.

The Committee notes the Government's information that it has taken concrete measures to prevent and protect children under 18 years of age from performing hazardous work. The Government indicates that labour inspectors have conducted regular and special monitoring where hazardous work for children is prohibited. In addition, the Committee notes with *interest* that the Ministry of Labour and Vocational Training (MoLVT), in cooperation with the ILO, has developed and implemented guidelines for conducting effective and regular child labour inspections. According to the MoLVT annual report for 2016, 57 garment factories employed 635 children aged between 15 and 18 years in lawful conditions respectful of the Labour Law. The Government further indicates that the MoLVT is working closely with all social partners, including the ILO, to investigate suspected child labour cases. The Government indicates that, as a result, there were decreases in cases of children engaged in hazardous work, going from 34 cases in 2014, to seven in 2015, and four in 2016. The Committee notes that this general trend is corroborated in the June 2016 synthesis report of Better Factories Cambodia (BFC), which is a programme developed in partnership with the ILO and the International Finance Corporation, in the framework of which independent assessments of working conditions in Cambodian apparel factories have been conducted since 2001. According to this 33rd synthesis report, while child labour was found in 2 per cent of the factories where BFC confirmed the presence of underage workers (normally between 12 and 15 years of age), the number of confirmed child labour cases dropped from 65 in 2013, to 28 in 2014, and 16 in 2015. The BFC was able to work with the Garment Manufacturers Association of Cambodia to place these underage workers in vocational training centres. ***Taking due note of the measures taken, the Committee encourages the Government to continue its efforts in protecting children under 18 years of age from being employed in hazardous work in the garment and footwear sectors, and to continue providing information on the results achieved.***

2. *Hazardous work in the sugarcane sector.* The Committee previously noted the ITUC's allegation that child labourers in Cambodia are engaged in hazardous work in agriculture, particularly in sugar cane farms, such as the handling and spraying of pesticides and herbicides and cutting, tying and carrying heavy bundles of sugar cane.

The Committee notes the Government's indication that provincial labour inspections continue to take preventive measures and advocate in small-household sugarcane farms against children performing hazardous work. It notes, however, that according to the "Rapid assessment on child labour in the sugarcane sector in selected areas in Cambodia" of 2015, conducted by the Cambodia Institute of Development Study, children were found working in sugarcane fields in all locations surveyed, some of them as young as 7 years old. The findings showed that 54 per cent of the working children surveyed worked in excess of permissible hours. This was especially prevalent for boys working on commercial plantations, where 82 per cent worked more than the number of hours permissible by Cambodian regulations. In addition, it was found that the work environment and tasks carried out by children, such as working around sharp cane leaves in excessively hot and humid conditions, cutting sugarcane, and operating hand tractors, were extremely dangerous. Therefore, it was found that the work performed by children in the sugarcane sector qualified as hazardous. ***The Committee therefore urges the Government to strengthen its efforts to protect children under 18 years of age from being employed in hazardous work in both commercial and household sugarcane fields. It requests the Government to continue providing information on the progress achieved and on the number of violations detected.***

*Article 8. International cooperation. Trafficking.* In its previous comments, the Committee took note of the measures taken by the Government to increase international cooperation to combat trafficking in children and requested it to enhance its efforts in this regard.

The Committee notes the Government's information that the MoLVT has been working closely with Thailand and other Mekong subregion countries, based on various memoranda of understanding (MoUs) and the Subregional Plan of Action 2015–18 of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT SPA IV), to enhance its tight cooperation in combating human trafficking and assisting the victims. The Government indicates that, based on the MoLVT's 2016 annual report, 360,000 undocumented migrants were under the process of regularization through the bilateral action plan between Cambodia and Thailand (2016–18), and 517 children (230 girls) who were found working in construction sites and cassava farms in Thailand were returned with their families and integrated into communities through the national referral mechanism to support victims of trafficking. Furthermore, through COMMIT SPA IV, the countries of the Mekong subregion exchanged knowledge, information and capacity building. Trainings on victim identification and standard operation procedures were also conducted.

However, the Committee notes, according to the UNODC report "Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand" of August 2017, that while trafficking in persons from Cambodia to Thailand for sexual exploitation has declined in recent years, Cambodia has become a destination country for sex trafficking from Viet Nam and experiences high levels of internal trafficking. ***The Committee requests the Government to continue taking measures to enhance international cooperation to combat trafficking in children, particularly as regards identification, protection and assistance of child victims of trafficking from Viet Nam. It also requests the Government to continue providing information on the impact of COMMIT SPA IV, in terms of the number of child victims of trafficking detected, assisted and returned to their countries of origin.***

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

## Cameroon

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

*Articles 1 and 2(1) of the Convention. National policy, minimum age for admission to employment or work, and application of the Convention in practice.* In its previous comments, the Committee noted that the Labour Code only applies within the framework of an employment relationship and does not protect children engaged in work outside a contractual employment relationship. However, the Committee noted that over 1.5 million children under 14 years of age were working in Cameroon and over a quarter of children aged 7 or 8 years were engaged in some form of economic activity (27 and 35 per cent, respectively) and were at serious risk of abuse, injury and disease in the workplace owing to their extreme youth. In addition, 164,000 children between 14 and 17 years of age were forced to perform hazardous work. The Committee also noted the Government's indication that the children's economic activities were mainly in the informal economy.

The Committee noted that the resources allocated to the labour inspectorate were insufficient to conduct effective investigations and that it did not carry out inspections in the informal economy. It noted the adoption of the National Plan of Action for the elimination of the worst forms of child labour (PANETEC) 2014–16, within which the reinforcement of resources for action by labour inspectors and the extension of their scope of activity were priorities. Substantial resources for action (logistics and transport, operating budget and inspection operations) were to be allocated to the labour inspection services to enable them to extend their activities effectively against child labour.

The Committee notes the Government's indication in its report that the National Committee on Combating Child Labour has incorporated its anti-child labour activities in the programme and budget of the State. However, the Committee notes with *concern* the Government's indication that the PANETEC has still not been adopted, which is an obstacle to its effective implementation. The Committee reminds the Government that the Convention applies to all branches of economic activity, whether formal or informal, and that it covers all types of employment or work, irrespective of whether or not it is on the basis of a contractual employment relationship and whether or not it is remunerated. Referring to the General Survey of 2012 on the fundamental Conventions (paragraph 345), the Committee observes once again that in some cases the limited number of labour inspectors does not enable the whole of the informal economy to be covered. Hence it calls on member States to strengthen the capacities of the labour inspectorate.

The Committee is once again bound to express its *deep concern* at the significant number of children who are working in Cameroon, including in hazardous types of work. ***The Committee urges the Government once again to step up its efforts to ensure the effective elimination of child labour below the minimum age for admission to employment, including in hazardous types of work, in particular by reinforcing labour inspection in the informal economy. The Committee requests that the Government provide information on progress made in this respect. It also requests that the Government continue providing information on the practical conduct of inspections by labour inspectors in the area of child labour, including the number of violations recorded and extracts from inspection reports. Lastly, the Committee urges the Government to take the necessary steps to ensure that the PANETEC is adopted as soon as possible.***

*Article 2(3). Age of completion of compulsory education.* The Committee previously noted that the school attendance rate of working children was substantially lower than that of non-working children, at all ages. The school attendance rate was 70 per cent for working children between 6 and 14 years of age but was 86 per cent among children who did not work.

The Committee notes that the national education system is regulated by Act No. 98/004 of 14 April 1998 governing education in Cameroon. Under section 9 of the Act, only primary education is compulsory in the country, which begins at the age of 6 years (following two years of preschool education) and lasts for a six-year period (section 16). Hence compulsory schooling ends at the age of 12 years in Cameroon, namely two years before the minimum age for admission to employment or work (14 years). Referring to the General Survey of 2012 on the fundamental Conventions, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (paragraph 371). The Committee therefore considers that the age of completion of compulsory schooling should be raised to coincide with that of the minimum age for admission to employment or work, as provided for in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Recalling that compulsory schooling is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary steps to make education compulsory up to the minimum age for admission to employment, namely 14 years.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

*Articles 3(a), 5 and 7(1) of the Convention. Sale and trafficking of children. Monitoring mechanisms and penalties.* The Committee previously noted that, according to the estimates of the 2012 study produced jointly by the Government and the "Understanding Children's Work" programme, between 600,000 and 3 million children were victims of trafficking in Cameroon. It noted that Act No. 2005/015 concerning the trafficking of children and child labour had been repealed and replaced by Act No. 2011/024, which is broader in scope. The Committee also noted the observations

of the International Trade Union Confederation (ITUC) to the effect that the Government had reportedly conducted ten investigations into the trafficking of children in 2013, which could hardly be considered an adequate response given the scale of the problem. In the Committee on the Application of Standards at the 104th Session of the International Labour Conference in June 2015, the Government representative of Cameroon to the Conference Committee pointed out that the low number of investigations was due to the small number of complaints made.

The Committee notes that the provisions of Act No. 2011/024 have been incorporated into the new Penal Code, which was adopted through Act No. 2016/007 (section 342-1). It also notes the Government's indications in its report that awareness raising in relation to the scourge of the trafficking of children has been conducted for all parties involved in combating child labour, including the heads of decentralized departments of sectoral administrations, and they have been recommended to systematically report any proven case of commercial trafficking and exploitation of children. However, the Committee observes that the Government does not respond to the Committee's concerns regarding the low number of investigations and prosecutions relating to the trafficking of children in Cameroon.

The Committee reminds the Government once again that under *Article 5* of the Convention, member States must establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention, irrespective of any complaints filed by victims. Moreover, referring to the General Survey of 2012 on the fundamental Conventions, the Committee emphasizes that any penalties laid down will only be effective if they are applied in practice, which requires procedures for bringing violations to the attention of the judicial and administrative authorities, and that these authorities be strongly encouraged to apply such penalties (paragraph 639). ***The Committee therefore urges the Government to take the necessary steps to ensure that monitoring mechanisms are adequate for detecting cases involving the sale and trafficking of children. It also requests the Government to take the necessary steps to ensure the thorough investigation and robust prosecution of persons who engage in the sale and trafficking of children under 18 years of age, particularly by reinforcing the capacities of the authorities responsible for the enforcement of section 342-1 of the new Penal Code and Act No. 2011/024, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. Lastly, it requests the Government to provide information on the measures adopted in this respect and on the results achieved, disaggregated, where possible, by age and gender of the victims.***

*Article 3(b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities.* In its previous comments, the Committee noted the Government's indication that the Bill on the Child Protection Code and the Bill on the Family Code had been incorporated into the Bill issuing the revised Civil Code (which is being finalized), and that this was to cover issues relating to the use and procuring of children for the production of pornography, for pornographic performances, as well as for illicit activities, particularly the production of drugs. The Committee also noted that the Conference Committee had urged the Government to adopt and implement the Child Protection Code, which had been pending for almost ten years, in order to prohibit the use, procuring or offering of children for the abovementioned purposes.

The Committee notes with *concern* the Government's indication that the Civil Code is still being revised. It also notes the Government's indication that the Penal Code establishes penalties for all illicit activities. In this regard, the Committee observes that Cameroon has adopted a new Penal Code through Act No. 2016/007, sections 344 and 346 of which prohibit the corruption of young people and indecent behaviour in the presence of a minor. However, the Committee observes that neither these provisions nor the provisions penalizing illicit activities adequately prohibit the use, procuring or offering of a child for the production of pornography, for pornographic performances, or for illicit activities. The Committee notes the Government's statement that the outcome of the request for technical assistance will enable the necessary competencies to be acquired to address this issue. ***Noting that it has been raising this issue for over ten years, the Committee urges the Government once again to take the necessary measures as soon as possible to ensure that the national legislation prohibits the use, procuring or offering of a child under 18 years of age for the production of pornography, for pornographic performances or for illicit activities, through the adoption either of the Child Protection Code or of any other legislative text that incorporates the relevant provisions. Moreover, sufficiently dissuasive penalties for the offences in question must also be adopted as a matter of urgency.***

*Article 4(3). Periodic review and revision of the list of hazardous types of work.* In its previous comments, the Committee noted the observations of the ITUC to the effect that some 164,000 children between 14 and 17 years of age were involved in hazardous work in Cameroon. The Committee noted that Order No. 17 of 27 May 1969 concerning child labour (Order No. 17) – adopted more than 48 years ago – does not prohibit work under water or work at dangerous heights, as in the case of children employed in fishing or banana harvesting. In this regard, the Committee noted that the Conference Committee had urged the Government to urgently revise, in consultation with the social partners, the list of hazardous types of work established by Order No. 17 in order to prevent the engagement of children under 18 years of age in hazardous activities, including underwater work and work at dangerous heights.

The Committee notes the Government's indication that the revision of the list of hazardous types of work is due to take place in 2018 and will be undertaken in conjunction with the social partners. The Government indicates that the ILO Office in Yaoundé has recruited a consultant who has initiated the process of revision of this list. ***The Committee urges the Government to take the necessary steps to ensure the adoption as soon as possible of the revised list of hazardous types of work prohibited for children under 18 years of age, in consultation with the social partners. It requests the Government to provide information on any progress made in this respect.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. HIV/AIDS orphans.* In its previous comments, the Committee noted that, according to estimates of the Joint United Nations Programme on HIV/AIDS (UNAIDS), there were approximately 310,000 children who were HIV/AIDS orphans in Cameroon in 2014. The Committee noted the Government's indications that this problem was the subject of in-depth discussion within the National Committee for Combating Child Labour, the body established in 2014 for the implementation of the National Plan of Action for the elimination of the worst forms of child labour (PANETEC) 2014–16. The Government indicated that actions are planned in the context of the PANETEC relating to the ongoing establishment of structures to care for HIV/AIDS orphans, including initiatives implemented by the Ministry of Public Health and the Ministry of Social Affairs. However, the Committee noted that even though the PANETEC had been technically approved, it had not yet been officially adopted.

The Committee notes with **deep concern** that not only has the PANETEC not yet been adopted, but that, according to UNAIDS estimates for 2016, the number of HIV/AIDS orphans has reached 340,000. **Recalling that HIV/AIDS orphans are at particular risk of becoming engaged in the worst forms of child labour, the Committee urges the Government to take immediate and effective measures to protect them from these worst forms of labour. It requests the Government once again to send information on the measures taken in this respect and the results achieved, and also on the number of HIV/AIDS orphans who have been admitted to care structures set up for their benefit.**

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

## Central African Republic

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Articles 1 and 2(1) of the Convention. National policy, scope, and application of the Convention in practice.* The Committee previously noted that the Labour Code is not applicable to self-employed workers (section 2) but only governs occupational relationships between workers and employers deriving from employment contracts (section 1). In this regard, the Committee noted with concern that 57 per cent of children between 5 and 14 years of age were engaged in work in the Central African Republic (44 per cent of boys and 49 per cent of girls) and that an increasingly large number of these children were working in the informal economy, often employed in hazardous work. The Committee noted the Government's indication that a national policy aimed at progressively abolishing child labour was being formulated. Moreover, it noted that activities were being conducted in partnership with UNICEF to raise the awareness of economic operators regarding the protection of children employed in the informal economy and in hazardous work, since the Government was not in a position, on account of financial difficulties, to strengthen the capacities of the labour inspectorate in such a way as to ensure that these children would enjoy the protection of the Convention.

In view of the considerable number of children under 14 years of age who are working in the country, the Committee notes with **deep concern** the Government's indication in its report that this national policy has still not been adopted owing to a lack of financial resources. However, the Committee notes the Government's indications that the impact of the awareness-raising activities conducted in collaboration with UNICEF can be seen in the reduction in the number of children who work on their own account or in the informal economy, the integration of children in their own or host families, or their care by the Ministry of Social Affairs or by non-governmental organizations (NGOs) established in the country. **Observing that the Government has been referring for a number of years to a national policy aimed at progressively abolishing child labour, the Committee once again requests that the Government take immediate steps to formulate and implement such a policy as soon as possible. It strongly urges the Government to continue taking measures to ensure that children working in the informal economy enjoy the protection of the Convention and to supply information on progress made in this respect.**

*Article 3(1) and (2). Minimum age for admission to hazardous types of work and determination of these types of work.* The Committee previously noted that section 261 of the Labour Code provides that a joint order of the Minister of Labour and the Minister of Public Health, issued further to the opinion of the Standing National Labour Council, shall determine the types of work and the categories of enterprises prohibited for children, and the age limit to which this prohibition applies. The Government indicated that the adoption of the abovementioned order was imminent.

The Committee notes the Government's indication that the Directorate-General of Labour and Social Protection submitted a request to UNICEF in November 2016 with a view to drawing up a list of the types of work constituting the worst forms of child labour, but that there has been no follow-up to this request. The Committee therefore notes with **concern** that there is still no list in existence in the Central African Republic that determines hazardous types of work prohibited for children under 18 years of age, despite the fact that the Labour Code was adopted in 2009, in other words, nearly ten years ago. **Recalling that, under Article 3(2) of the Convention, hazardous types of work must be determined in consultation with the organizations of employers and workers concerned, the Committee urges the Government to take the necessary steps to ensure that the list of types of employment or work prohibited for children and young persons under 18 years of age is adopted as soon as possible. It requests that the Government provide information on all progress made in this respect.**

*Article 9(3). Keeping of registers by employers.* In its previous comments, the Committee noted that, under section 331 of the Labour Code, certain enterprises or workplaces, as well as certain categories of enterprises or

workplaces, may be exempted from the obligation to keep an employment register by reason of their situation, their small size or the nature of their activity by order of the Ministry of Labour further to an opinion of the Standing National Labour Council. The Committee reminded the Government that *Article 9(3)* of the Convention does not envisage such exemptions.

The Committee notes that the Government indicates once again that it has taken account of the Committee's observation in order to ensure that the legislation is in conformity with this provision of the Convention. The Committee observes with *deep concern* that it has been raising this matter since 2003 and that the Government has not taken any steps since then to bring its legislation into conformity with the Convention on this point, despite having had the opportunity to do so at the time of the adoption of the new Labour Code in 2009. ***The Committee urges the Government to take the necessary measures as soon as possible to bring the legislation into conformity with the Convention, ensuring that no employer may be exempted from the obligation to keep a register of persons under 18 years of age employed by him or working for him.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted that despite the adoption of the 2009 Labour Code, which prohibits the forced or compulsory recruitment of children under 18 years of age for use in armed conflict, children were still found in the ranks of various armed groups and local self-defence militia. Indeed, children continued to engage in combat as part of the various armed groups. The Committee noted that the human rights situation constantly worsened in the Central African Republic throughout 2013, with the proliferation and shifting of alliances of armed groups: on the one hand, the many groups which came to form the Séléka coalition or are associated in varying degrees with the ex-Séléka coalition; on the other hand, the anti-balaka, a local defence militia which emerged in the second half of the year in response to systematic attacks against the civilian population by the ex-Séléka coalition. Both the anti-balaka and the Séléka coalition systematically recruited and used children.

The Committee notes the Government's indication in its report that the security situation in the Central African Republic remains a source of major concern for the Government. The Government indicates that, in the context of the National Recovery and Peacebuilding Plan for the Central African Republic (RCPA) 2017–21, in the first component on supporting peace, security and reconciliation, the Government launched the disarmament, demobilization, reintegration and repatriation process with a view to promoting peace in the country. The Government indicates that a return to security will enable the redeployment of the administration throughout the country as well as the restoration of the authority of the State with a view to conducting investigations into the forced recruitment of children and prosecuting the perpetrators.

The Committee also notes that, according to the report of 12 February 2016 of the United Nations (UN) Secretary-General on children and armed conflict in the Central African Republic (2016 report of the Secretary-General), on 23 July 2014 an agreement on the cessation of hostilities was signed in Brazzaville, which led to the gradual restoration of calm in Bangui and set the ground rules for the completion of the transition process, such as the holding of elections, disarmament, demobilization and reintegration, and national reconciliation (S/2016/133, paragraph 12). The 2016 report of the Secretary-General also indicates that the Bangui Forum for National Reconciliation, held in May 2015, and the preceding nationwide popular consultations culminated in the signing of an agreement on the principles of disarmament, demobilization, reintegration and repatriation, and the integration of armed elements into the uniformed state forces of the Central African Republic. On 5 May 2015, ten armed groups, including factions of ex-Séléka and anti-balaka, signed an agreement to stop and prevent the recruitment and use of children and other grave violations against children (paragraph 14). The Committee also notes that, according to the country programme document of 10 August 2017 proposed by UNICEF and presented to the Executive Board of the UN Economic and Social Council (UNICEF country programme document), the Central African Republic is gradually emerging from a period of institutional, social and political instability, with the adoption of a new Constitution in March 2016 and the holding of democratic, transparent presidential elections at the start of 2016 and legislative elections in April 2016. However, armed groups continue to control the country's natural resources, threatening social cohesion and access to basic services (E/ICEF/2017/P/L.27, paragraph 1).

However, the Committee notes that, according to the 2016 report of the Secretary-General, a 2014 UNICEF study estimated that between 6,000 and 10,000 children were associated with armed groups, a surge attributed to the increased activities of anti-balaka factions since 2013 (S/2016/133, paragraph 17). According to the 2016 report of the Secretary-General, not only were children brutalized with regard to being used in combat and as sex slaves but they were also forced to perform various support roles, including as informants. Since 2014, children have been increasingly used to commit violations against civilians. The report also indicates that in 2015 a total of 39 children (28 boys and 11 girls) were verified as having been newly recruited, the majority by the Lord's Resistance Army (LRA) (21 children) and others by ex-Séléka factions such as the Union for Peace in Central Africa (UPC) (13 children). However, during the outbreak of violence that erupted on 26 September, hundreds of children were observed either manning checkpoints or erecting barricades in Bangui (paragraph 22). Furthermore, according to the report of 28 July 2017 of the Independent Expert on the situation of human rights in the Central African Republic, the Office for the Coordination of Humanitarian Affairs (OCHA) estimates that from 4,000 to 5,000 children still belong to armed groups (A/HRC/36/64, paragraph 69).

Despite the progress made on achieving stability in the country, the Committee once again expresses *deep concern* at the current situation, especially as it entails other violations of children's rights, such as abductions, murders and sexual violence. It recalls once again that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***While recognizing the complexity of the situation prevailing on the ground and the existence of an armed conflict and armed groups in the country, the Committee urges the Government to intensify its efforts to eliminate in practice the forced recruitment of children under 18 years of age by all armed groups in the country. The Committee also urges the Government to take immediate measures to ensure that the investigation and prosecution of offenders is carried out and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting children under 18 years of age for use in armed conflict. It requests the Government to supply information on the number of investigations conducted, prosecutions brought and convictions handed down under the provisions of the Labour Code.***

*Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and to ensure their access to free basic education and vocational training. Child soldiers.* In its previous comments, the Committee noted that measures had been adopted in partnership with UNICEF to provide appropriate direct assistance for removing child victims of forced recruitment from armed groups and ensuring their rehabilitation and social integration. However, the Committee noted that the increase in insecurity had given rise to the re-enlistment of children and had restricted humanitarian action in many parts of the country. However, the Committee noted that the transitional Government had undertaken a review of the national disarmament, demobilization and reintegration strategy and that the UN was working closely with the transitional authorities on this issue to ensure that appropriate provisions on the disarmament, demobilization and reintegration of children were incorporated in the national strategy.

The Committee notes that, according to the 2016 report of the Secretary-General, between January 2014 and December 2015 the country task force monitoring and reporting on violations committed against children separated 5,541 children (4,274 boys and 1,267 girls) from armed groups. However, the country task force was only able to document a total of 715 children, including 114 girls, as being newly recruited and used (S/2016/133, paragraph 17). According to the report, there were many cases of children who had been demobilized and then re-enlisted in armed groups. Between December 2013 and the end of 2014, the country task force verified 464 cases of new recruitment, including 446 by anti-balaka (360 boys and 86 girls) and 18 boys by ex-Séléka factions. In addition, 2,807 children (2,161 boys and 646 girls) were identified and verified among armed groups, including anti-balaka (2,347 children), various ex-Séléka factions (446 children) and the LRA (13 children), and one boy was demobilized from the "Revolution and Justice" armed group (paragraph 20). Moreover, according to the UNICEF country programme document, of the 9,449 children freed from armed groups from January 2014 to March 2017 (30 per cent of whom were girls), only 4,954 had benefited from reintegration programmes (E/ICEF/2017/P/L.27, paragraph 8).

The Committee notes the Government's indication that it is giving priority to actions combating the scourge of human rights violations. To this end, many different initiatives are being implemented, such as protection of women's and children's rights, development of humanitarian actions and economic growth for lasting peace. The Committee notes that, according to the report of 2 June 2017 of the Secretary-General on the situation in the Central African Republic, UNICEF provided integration support to 420 children released from armed groups, while 239 children (including 55 girls) were separated from anti-balaka groups. Furthermore, as part of efforts to end the association of children with armed groups, the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), deployed in September 2014 to replace the African Union-led International Support Mission to the Central African Republic (MISCA), organized a week-long campaign in February 2017 in collaboration with local partners to raise the awareness of armed groups, community members and authorities in five localities regarding the impact of armed conflict on children (S/2017/473, paragraph 36). ***While noting the measures taken by the Government and the difficulty of the situation, the Committee urges the Government to intensify its efforts to provide appropriate direct assistance to remove child victims of forced recruitment from armed groups and ensure their rehabilitation and social integration so as to guarantee their long-term, definitive demobilization. It requests the Government to provide information in its next report on progress made and the results achieved in this respect.***

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

## Chad

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

*Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845-S/2013/245, paragraphs 45 and 46), despite progress in the implementation of the action plan signed between the Government and the United Nations in June 2011

concerning children associated with the armed forces and armed groups in Chad, and although the national army of Chad did not recruit children as a matter of policy, the country task force verified 34 cases of recruitment of children by the army during the reporting period. The 34 children appeared to have been enlisted in the context of a recruitment drive in February–March 2012, during which the army gained 8,000 new recruits. In this respect, the Committee noted the new roadmap of May 2013, adopted further to the review of the implementation of the action plan concerning children associated with the armed forces and armed groups in Chad and aimed at achieving full observance of the 2011 action plan by the Government of Chad and the United Nations task force. The Committee observed that, in the context of the roadmap, one of the priorities was to speed up the adoption of the preliminary draft of the Child Protection Code, which prohibits the recruitment and use of young persons under 18 years of age in the national security forces and lays down penalties to that effect. Moreover, during 2013 it was planned to establish transparent, effective and accessible complaint procedures regarding cases of recruitment and use of children, and also to adopt measures for the immediate and independent investigation of all credible allegations of recruitment or use of children, for the persecution of perpetrators and for the imposition of appropriate disciplinary sanctions.

The Committee takes note of the information contained in the United Nations Secretary-General's report of 15 May 2014 to the Security Council on children and armed conflict (A/68/878–S/2014/339). According to this report, the deployment of Chadian troops to the African-led International Support Mission in Mali (AFISMA) has prompted renewed momentum to accelerate the implementation of the action plan signed in June 2011 to end and prevent underage recruitment in the Chadian National Army, and the Chadian authorities have renewed their commitment to engage constructively with the United Nations to expedite the implementation of the action plan. The Government of Chad, in cooperation with the United Nations and other partners, has therefore taken significant steps to fulfil its obligations. For example, a presidential directive was adopted in October 2013 to confirm 18 years as the minimum age for recruitment into the armed and security forces. This directive also establishes age verification procedures and provides for penal and disciplinary sanctions to be taken against those violating the orders. The directive was disseminated among the commanders of all defence and security zones, including in the context of several training and verification missions. Furthermore, on 4 February 2014, a presidential decree explicitly criminalized the recruitment and use of children in armed conflict.

The Secretary-General states, however, that while the efforts made by the Government to meet all obligations under the action plan have resulted in significant progress, a number of challenges remain to ensure sustainability and the effective prevention of violations against children. Chad should pursue comprehensive and thorough screening and training of its armed and security forces to continue to prevent the presence of children, including in the light of Chad's growing involvement in peacekeeping operations. While no new cases of recruitment of children were documented by the United Nations in 2013 and no children were found during the joint screening exercises carried out with the Chadian authorities, interviews confirmed that soldiers had been integrated in the past into the Chadian National Army from armed groups while still under the age of 18. According to the Secretary-General, the strengthening of operating procedures, such as those for age verification, which ensure the accountability of perpetrators, should remain a priority for the Chadian authorities. Finally, the Secretary-General invited the National Assembly to proceed as soon as possible with the examination and adoption of the Child Protection Code, which should provide greater protection for the children of Chad. ***The Committee therefore requests the Government to intensify its efforts to end, in practice, the forced recruitment of children under 18 years of age by the armed forces and armed groups and to undertake immediately the full demobilization of all children. The Committee urges the Government to take immediate measures to ensure that the perpetrators are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. Finally, the Committee urges the Government to take the necessary measures to ensure the adoption of the Child Protection Code as soon as possible.***

*Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Preventing children from being engaged in the worst forms of child labour, removing children from these forms of labour and ensuring their rehabilitation and social integration. Children who have been enlisted and used in armed conflict.* In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845–S/2013/245, paragraph 49), the actions taken by the Government for the release, temporary care and reunification of separated children, while encouraging, were not yet in line with the commitments made in the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad. The Committee noted that one of the priorities referred to in the 2013 roadmap was to secure the release of children and support their reintegration.

The Committee notes that, according to the Secretary-General's report of 15 May 2014, a central child protection unit has been established in the Ministry of Defence, as well as in each of the eight defence and security zones, to coordinate the monitoring and protection of children's rights and to implement awareness-raising activities. Between August and October 2013, the Government and the United Nations jointly conducted screening and age verification of approximately 3,800 troops of the Chadian national army in all eight zones. The age verification standards had been previously developed during a workshop organized by the United Nations in July. In addition, between August and September 2013, a training-of-trainers programme on child protection was attended by 346 members of the Chadian National Army. As from July 2013, troops of the Chadian National Army deployed in Mali started to receive pre-deployment training on child protection and international humanitarian law; in December of the same year, 864 troops attended child protection training at the Loumia training centre. ***The Committee encourages the Government to intensify its efforts and continue its collaboration with the United Nations in order to prevent the enrolment of children in armed groups and improve the situation of child victims of forced recruitment for use in armed conflict. In addition, the Committee requests the Government once again to supply information on measures taken to ensure that child soldiers removed from the armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training, wherever appropriate. It requests the Government to supply information on the results achieved in its next report.***

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

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

## Chile

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

The Committee notes the observations of the Single Central Organization of Workers of Chile (CUT-Chile), received on 3 November 2017.

*Articles 1 and 3 of the Convention. National policy, hazardous types of work and application of the Convention in practice.* In its previous comment, the Committee noted the survey carried out in 2012 on work by boys, girls and young persons (EANNA), undertaken by the Ministry of Social Development, the Ministry of Labour and Social Welfare and ILO/IPEC. It noted that, according to the EANNA, 6.6 per cent of children aged between 5 and 17 years were engaged in child labour, of whom 90 per cent were engaged in hazardous types of work. Finally, the Committee noted the Intersectoral Protocol on the detection and comprehensive protection for children engaged in hazardous work in agriculture, which recognizes the scope of child labour in the sector and sets out a four-stage plan to combat this practice.

The Committee notes the CUT-Chile's observation that, since the EANNA was conducted in 2012, no surveys have been undertaken to assess the extent and nature of child labour in the country and that updated statistical data are required.

The Committee notes the reference by the Government in its report to the National Strategy for the Elimination of Child Labour and the Protection of Young Persons (2015–25), *Crecer Felices* ("Growing Up Happy"), the principal objective of which is the lasting elimination of child labour. The Government adds that, in 2015, the Programme to Combat Child Labour and the Social Observatory against Child Labour commenced two qualitative evaluation processes, one on child labour in the agricultural sector in the regions of Maule, Biobio and La Araucanía, and the other on child labour in commerce in the regions of Antofagasta, Valparaíso and Metropolitana. The Government indicates that these studies, carried out in 2016, show that young persons enter the world of work early and that, in more rural areas, teachers play an important role in keeping children at school. The Committee also notes with *interest* that, according to the Government, within the framework of the Intersectoral Protocol on the detection and comprehensive protection for children engaged in hazardous work, Decree No. 2 of 13 January 2017 amended and updated Decree No. 50 of 11 September 2007, which determines the list of activities considered to be hazardous for the development and health of persons under 18 years of age.

Finally, the Committee takes due note of the information provided by the Government concerning the complaints received by the Labour Department of violations relating to child labour in 2015 and 2016, and the number and nature of the penalties imposed. ***The Committee requests the Government to continue its efforts, particularly within the context of the Strategy and Protocol referred to above, to ensure the progressive elimination of child labour, including in hazardous types of work. The Committee also requests the Government to provide updated statistical information on the nature, extent and trends of child labour and work by young persons who have not reached the minimum age specified by the Government when ratifying the Convention, and to continue providing information on the number and nature of the violations recorded and the penalties imposed.***

*Article 2(1). Scope of application.* The Committee previously noted that the Labour Code does not apply to employment relationships that are not based on a formal contract, such as children working on their own account. However, it noted that children engaged in this type of work are covered by the "Puente Programme". This Programme provides support to families on condition that children under 18 years of age have not left school to work and are no longer engaged in hazardous types of work or in the worst forms of child labour.

The Committee takes due note of Act No. 20.595 of 2013 which establishes the Security and Opportunities Subsystem and the Ethical Family Income Programme (IEF). The Government indicates that, as the IEF provides support for families in situations of extreme poverty, without applying the conditions of the Puente Programme, it has brought an end to the latter Programme. However, it indicates that the Puente Programme benefited a total of 347,135 families. ***The Committee requests the Government to pursue its efforts, in the context of the Ethical Family Income Programme, to ensure that no children under 15 years of age are engaged in child labour, including in the informal economy. It requests the Government to provide information on this subject.***

*Article 8. Artistic performances.* In its previous comment, the Committee noted that section 16 of the Labour Code provides that authorization for young persons under 15 years of age to participate in artistic performances may be granted by a legal representative *or* by the family court. It observed that, even though the family court may be mandated as the competent authority to grant authorization for participation in an artistic performance, the authorization of the legal representative of the young person, such as the parents, grandparents or guardians, was not sufficient to fulfil the requirements of the Convention.

The Committee notes with *satisfaction* that Act No. 20.821 of 18 April 2015 amends section 16 of the Labour Code by making the possibility for young persons under 15 years of age to participate in artistic performances subject to the dual condition of being explicitly authorized by their legal representative *and* by the family court.

## China

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 3(1) of the Convention. Hazardous work performed through work–study programmes.* The Committee previously noted the Government’s indication that the Ministry of Education had repeatedly issued circulars and increased its inspection efforts with a view to ensuring healthy development in work–study programmes. The Government also indicated that the work–study programmes must be incorporated into, and must abide by, normal teaching programmes and may not, for example, modify hours of work without prior permission. In addition, it indicated that schools that organize work–study programmes must ensure the safety of students by prohibiting participation in toxic, hazardous or dangerous types of activities or labour which exceed their physical capacity, and that local governments are required to analyse the manner in which work–study programmes are carried out on a local basis. The Committee noted, however, the 2014 report on the labour protection of interns in Chinese textile and apparel enterprises, carried out with ILO assistance, according to which 52.1 per cent of interns continue to work in conditions that do not meet national minimum standards for labour protection, and 14.8 per cent of interns are engaged in involuntary and coercive work. The Committee therefore noted with concern that a significant number of school children continue to engage in hazardous work within the context of work–study programmes. It also recalled that the technical assistance missions undertaken within the context of the Special Programme Account (SPA) project in 2013 addressed ways in which the legal framework could be strengthened with respect to protecting young persons engaged in work–study programmes.

The Committee notes the absence of information in this regard in the Government’s report. However, the Committee notes that the Ministry of Education, the Ministry of Finance, the Ministry of Human Resources and Social Security (MoHRSS), the State Administration of Work Safety and the China Insurance Regulatory Commission jointly issued the Management Regulations on internship of vocational-school students in 2016. Section 15 provides that students under 16 years of age shall not be engaged in on-job learning or on-job internship programmes, and that students under 18 years of age shall not be engaged in tasks which are prohibited by the Regulations on the special protection of minor workers. Section 16 of the Regulations prohibits work during public holidays, night work and overtime work for students. The Management Regulations further provide for the conclusion of internship agreements (section 12), the payment of remuneration (section 17), and the arrangement of compulsory insurance covering the whole internship period (section 35). According to section 27, the involvement of students under 16 years of age in on-job learning or internships shall be investigated and punished in accordance with the Regulations banning child labour. ***The Committee therefore requests that the Government take the necessary measures to ensure that the Management Regulations on internships for vocational-school students are effectively applied in practice, and to provide statistical information concerning the number and nature of infringements detected, as well as the specific penalties applied.***

*Article 8. Artistic performances.* The Committee previously noted that section 13(1) of the 2002 Regulations Banning Child Labour provides that organizations for performing arts and sports may recruit professional artists and athletes under the age of 16 years upon consent from their parents or legal guardians. According to the report from the 2013 SPA technical assistance mission, there were 2.01 million performances in China in 2012, including 13,000 registered performing groups, half of which included children. The report noted the Government’s indication that employing units were responsible for children’s health and protection, and applicants had to provide proof that children were enrolled in compulsory education. According to the report, the Government representative indicated that no system of individual permits existed, although it had existed in the past but had been repealed by the 2002 Regulations Banning Child Labour. Finally, the Committee noted the consensus between the ILO and the MoHRSS that the issue of children and young persons engaged in artistic performances needed to be regulated in legislation.

The Committee notes the Government’s information in its report that, according to the working rules of school art education (Ministry of Education Order No. 13 of 2002), no entities or schools shall organize students to participate in any commercial artistic activities or commercial celebration activities. Further, the organization of students to participate in competitive activities or artistic activities organized by social groups, cultural sectors and other social organizations shall be reported to the higher authorities (section 11). However, the Government indicates that, as internal working rules of the education sector, this normative document lacks wider legal effect, and that the Ministry of Education is making efforts to incorporate it into the legislative process. The Government also states that the participation of children and adolescents in commercial performances mainly concerns artistic activities of public interest or for local tourism promotion, as well as other activities specially organized for children. The Committee recalls that, by virtue of *Article 8* of the Convention, children below the minimum age of admission to employment or work of 16 years, who are employed in artistic activities, must apply for permits granted by the competent authority. Moreover, permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed. ***The Committee therefore once again requests the Government to take the necessary measures to enact national legislation that is in conformity with Article 8 of the Convention and which specifies that children below the minimum age of admission to employment or work of 16 years, who are employed in artistic activities, must apply for permits granted by the competent authority. Moreover, noting the absence of information, it once again requests that the Government provide information on the number of children who currently participate in commercial artistic performances and professional sports activities, and who fall within the exception provided for by section 13(1) of the 2002 Regulations Banning Child Labour.***

*Article 9(1). Labour inspectorate and penalties.* The Committee previously noted that it was difficult to assess the extent of child labour owing to a lack of official reporting on cases and the lack of transparency in statistics. The Committee also noted that the Government had employed labour security advisers from trade unions and other institutions, to monitor the compliance of employers with national labour laws and regulations. The Government indicated that the labour inspectorate implements the provisions of national legislation prohibiting child labour and regularly monitors implementation through routine and ad hoc inspections, investigation of complaints and verification of cases reported by informants, written requests and other forms of supervision and law enforcement.

The Committee notes the Government's information that, by the end of 2016, the labour inspection system consisted of 4,672 labour security inspection departments, 26,000 full-time labour security inspectors, 26,700 part-time inspectors, and 72,100 inspection assistants. The labour inspectorate carries out law enforcement activities jointly with departments of public security, industry and commerce, administration of work safety and public health, with regard to child labour. The Government states that the illegal use of child labour is rare, and to date, no case has been found concerning the complicity by labour inspectors in this regard.

The Committee notes with *regret* the Government's statement that the data on investigations and penalties regarding child labour is considered confidential and cannot to be provided. However, the Committee notes that, according to the Measures on the Disclosure of Major Labour Violations to the Public (MoHRSS Order No. 29 of 2016), the Departments of Human Resources and Social Security must publish the cases of major labour violations which have been investigated and closed, including the violations of the Regulations Banning Child Labour, among others (section 5(5)). Moreover, the information published shall include the name and address of the perpetrators, the nature of violations and the decisions made by the competent authority (section 6). The Committee reminds the Government that, *Article 9(1)* of the Convention requires that the Government take all necessary measures to ensure the effective enforcement of the Convention, and that, as required by Part V of the report form, the Government shall provide information on statistical data on the employment of children and young persons, extracts from the reports of inspection services, information on the number and nature of contraventions reported, etc., which give a general appreciation of the manner in which the Convention is applied. ***The Committee therefore once again urges the Government to take the necessary steps to ensure that sufficient updated data on the situation of working children in China is made available, including, for example, data on the number of children and young persons below the minimum age who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work. It also once again requests that the Government provide information on the number and nature of violations detected by the labour inspectorate, the number of persons prosecuted and the penalties imposed.***

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

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)***

*Articles 3(a) and (b), and 7(1) of the Convention. Sale and trafficking of children and penalties.* The Committee previously noted that China is a source, transit and destination country for international trafficking in women and children and that, despite various projects and national plans, the phenomenon of trafficking for the purposes of forced labour and prostitution was worsening and that cross-border trafficking appeared to be on the rise. The Committee also noted the Government's information concerning the Plan of Action against Human Trafficking (2013–20), as well as the Anti-Trafficking Inter-Ministerial Joint Meeting (IMJM) of the State Council, which involves coordinating the implementation of action plans against trafficking in persons, comprehensively sanctioning trafficking crimes, and improving the long-term anti-trafficking mechanisms with respect to prevention, prosecution, assistance and rehabilitation. The Committee further noted that, between June 2010 and May 2014, 12,752 persons were prosecuted in 6,154 cases for abducting and trafficking women and children under section 240 of the Criminal Code, and 1,122 persons in 286 cases were convicted of buying trafficked women and children under section 241.

The Committee notes the Government's information in its report that Amendment IX to the Criminal Law came into effect in November 2015, section 241 of which provides that whoever "buys an abducted woman or child" commits a crime and is punishable by imprisonment of not more than three years or criminal detention. The Government indicates that, from June 2014 to June 2017, court decisions were handed down for 2,519 cases of women and children who were trafficked with 3,944 perpetrators involved and for 173 cases of purchase of abducted women and children with 456 perpetrators involved. The Committee also notes that the Supreme Court issued judicial interpretations on the application of laws regarding trafficking of women and children in December 2016 (No. 28 of 2016), in order to facilitate the effective application of related legislation in practice. However, the Committee notes that section 9 of Judicial Interpretation No. 28 of 2016 defines children under sections 240 and 241 of the Criminal Code as persons under 14 years of age. The Committee observes therefore that boys aged 14 to 18 years may not be protected under the provisions criminalizing trafficking in persons. ***The Committee therefore requests the Government to indicate the measures taken or envisaged to protect boys aged 14 to 18 years from trafficking. The Committee also requests the Government to continue its efforts to ensure thorough investigations and robust prosecutions against persons who engage in the trafficking of children, and to provide information on the number of investigations, prosecutions and convictions, as well as the specific penalties imposed in this respect.***

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

## Macau Special Administrative Region

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (notification: 2002)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that section 3(b) of Law No. 10/78/M on the Sale, Display and Exhibition of Pornography and Obscene Materials prohibits any sale to children, or marketing through children under 18 years of age, of pornographic or obscene materials, while section 166(4)(b) of the Penal Code only criminalizes the use of children under 14 years of age for the production of pornography. The Government indicated that Law No. 10/78/M was being revised pending suggestions from the public. The Committee therefore requested the Government to take the necessary measures to ensure the prohibition on the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances.

The Committee notes with *satisfaction* the Government's information in its report that Act No. 8/2017 (Amendment to the Penal Code) adds section 170(a) to the Penal Code, which prohibits the use of children under 18 years of age for the production of pornography or for pornographic performances, or inducing them to participate in such activities, with a penalty of imprisonment of up to eight years. **The Committee therefore requests the Government to provide information on the application of section 170(a) of the Penal Code in practice, including the number of investigations, prosecutions and convictions, as well as the penalties applied.**

## Colombia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

The Committee notes the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), received on 30 August 2017, those of the General Confederation of Labour (CGT), received on 31 August 2017, and those of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT), received on 1 September 2017.

*Article 1 of the Convention. National policy and application of the Convention in practice.* In view of the expiry of the National Strategy to Prevent and Eradicate the Worst Forms of Child Labour and Protect Young Workers (ENETI) 2008–15, the Government indicated previously that the National Planning Department (DNP) had undertaken an evaluation of the implementation of the Strategy, which would need to be taken into account in the redesign of the public policy paper for the prevention and eradication of child labour and the protection of young workers (2016–26).

The Committee notes the observations made by the CUT and the CTC in which they indicate that 869,000 children between the ages of 5 and 17 years work, and that rural areas are those most affected by child labour. They add that 4.2 per cent of children between the ages of 5 and 14 years are engaged in work, compared with 19.8 per cent of those between 15 and 17 years of age. The Committee notes the observations of the IOE and the ANDI, indicating that child labour has decreased, falling from 9.1 per cent in 2015 to 7.8 per cent in 2016. The CGT explains that most children participate in family economic activities and that the Government should therefore provide assistance to families, for example through subsidies, to prevent children being faced with the need to work.

The Committee notes the Government's indication in its report that 20 working days have been organized with the participation of the Colombian Family Welfare Institute (ICBF), the DNP and the ILO with a view to preparing the new public policy paper for the prevention and eradication of child labour and the protection of young workers (2016–26). During the preparation of this public policy, 13 seminars were also held to gather the views of children and young persons.

The Committee notes the Government's indication that child labour fell by 2.4 per cent between 2015 and 2016. The Government adds that, in 2016, 2,746 authorizations to work were granted to young persons under 18 years of age and that 202 applications for authorizations were refused, 129 authorizations were revoked and 1,870 inspections were carried out. **The Committee takes due note of the reduction of child labour in the country and requests the Government to continue its efforts for the progressive elimination of child labour, especially in rural areas. It also requests the Government to indicate whether the public policy for the prevention and eradication of child labour and the protection of young workers (2016–26) has been finalized and adopted, and to provide detailed information on its content and implementation. The Committee further requests the Government to continue providing updated statistical data on the employment of children and young persons, and to provide copies of any labour inspection reports.**

*Article 2(3). Compulsory education.* The Government indicated previously that, in cooperation with the National Agency to Combat Extreme Poverty, measures had been taken to carry out a census of the whole population and to ensure the integration of all children in the education system, including through collaboration with families to identify children marginalized by the education system.

The Committee noted the measures taken by the Government to increase the school attendance rate in the context of the ENETI 2008–15. However, it noted that the primary school enrolment rate was 90 per cent for girls and boys, and that at the secondary level it was 78.7 per cent for girls and 73.3 per cent for boys.

The Committee notes the observations of the CTC and the CUT, according to which 29.8 per cent of children between the ages of 5 and 17 years do not go to school because they are working. The Committee also notes the CGT's indication that the measures adopted by the Government to promote education have not been effective, as primary school attendance by children in 2016 fell by 85,005 pupils in relation to 2015.

The Committee notes the Government's indication that the Ministry of National Education has collaborated with strategic partners, including the Administrative Department for Social Prosperity, to ensure that the provision of education reaches the poorest and most vulnerable children and young persons. In this context, the Ministry of Education prepared a protocol at the beginning of 2016 for the organization of active outreach days in the cities of Medellín, Cali and Cartagena, where action has been carried out to reach out to children and young persons not attending school and to help them to enrol. The Government has also established various strategies to reduce school drop-outs through: (1) the implementation of flexible education models (MEF); (2) the school meals programme (PAE); (3) assistance for school transport; (4) the investment of public funds in educational assistance; and (5) a monitoring system to prevent and analyse the causes of school drop-outs. The Committee also takes due note of the adoption of Act No. 1753 of 2015 issuing the National Development Plan 2014–18 (PND 2014–18), of which one of the three pillars is education. It notes that, within the context of the PND 2014–18, the National Educational Infrastructure Plan (PNIE) has resulted in the creation of 3,243 new classrooms, which has benefitted 129,720 children and young persons, and that 2,533 additional classrooms intended to benefit 101,320 children and young persons are under construction. ***The Committee encourages the Government to continue its efforts to ensure that all children attend compulsory school at least up to the age of 15 years, and particularly the poorest children and young persons. It requests it to provide statistical data on school attendance rates in the country. To the extent possible, this information should be disaggregated by age and gender.***

*Article 9(1). Penalties.* The Committee noted previously that, although the Government indicates that any non-compliance with the legislation respecting minors is punishable with a fine of between one and 100 times the minimum wage, it did not provide details on the legislation.

The Government refers to Act No. 1610 of 2013 regulating certain aspects of labour inspection and indicates that sections 1 and 2 of the Act empower labour inspectors to monitor individual and collective issues in the private and public sectors relating to labour law and the ILO standards ratified by Colombia. The Committee notes that section 7 of the Act provides that labour inspectors shall have the authority to penalize offences with penalties from one to 5,000 times the monthly minimum wage depending on the gravity of the offence. Sections 8 to 11 provide for the possibility for inspectors to issue other penalties, such as the closure of workplaces, evidence gathering, the imposition of a trial period or the suspension of work. The Government adds that in 2015 violations of the legislation concerning minors resulted in 11 penalties (of a total value of 50,891,350 Colombian pesos (COP)) and that nine penalties were imposed by labour inspectors in 2016 (to a value of COP40,677,836). ***The Committee requests the Government to continue providing information on the practical implementation of Act No. 1610 of 2013, in particular the number and nature of the violations and the penalties imposed.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)**

The Committee notes the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), received on 30 August 2017, those of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT), received on 1 September 2017, as well as those of the General Confederation of Labour (CGT), received on 31 August 2017.

*Article 3(a) and (b) of the Convention. Sale and trafficking of children for commercial sexual exploitation and use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted the measures adopted by the country to combat the trafficking of children, but expressed concern at the increase in the already high number of children who are victims of sexual exploitation and trafficking and at the unequal enforcement of the law. It noted the observations of the CUT, CTC and CGT according to which the trafficking of children, including for the purposes of commercial sexual exploitation and sex tourism, remained very predominant in the country. The Committee noted the various measures taken by the Inter-Institutional Committee to Combat Human Trafficking in the fields of prevention, assistance and protection, international cooperation, investigation and penalties. The Government described the initiatives taken by the Ministry of Labour, the Ministry of Education, the Ministry of National Defence and the Ministry of International Relations to combat this practice. However, it noted that most of the national efforts described in the Government's report were related to trafficking in persons in general, and did not seem to include specific measures for the protection and removal of children of such situations. The Committee also noted that Colombia was, in South America, the country of origin of the largest number of victims of trafficking, and particularly children.

The Committee notes the indications of the CTC and the CUT that 7.1 per cent of persons working as prostitutes started to exercise this activity before the age of 15 years, and that 17.4 per cent of them started between the ages of 15 and 17 years. The Committee also notes the indication of the CGT that the measures taken and the laws adopted by the Government have not been effective, as a significant number of children continue to be the victims of sexual exploitation.

The Committee notes the Government's indication in its report that the Colombian Family Protection Institute (ICBF) has adopted numerous measures to restore the rights of children and young persons who are victims of commercial sexual exploitation. Among the measures taken, the ICBF has collaborated with the Ministry of Labour, the tourist police

and other state bodies for the implementation of the National Strategy to Prevent the Sexual Exploitation of Children and Young Persons in the context of tourism, the objective of which is to raise awareness of the various actors in the tourism sector to prevent the crime of commercial sexual exploitation of children and young persons. The ICBF has also prepared and published a document entitled “Analysis for the development of a public policy to combat the commercial sexual exploitation of children and young persons in Colombia – 2015”, with the aim of undertaking an analysis of the situation which is as close as possible to reality. The Government indicates that this analysis will help to identify the causes of the commercial sexual exploitation of children and to develop measures for its prevention. The Government adds that the ICBF has developed a strategy for cases to be followed up by the Anti-Trafficking Operational Centre (COAT) and that a matrix has been developed to ensure traceability and follow up to each case of trafficking, including cases of the sexual exploitation of children. The Committee further notes the establishment of a hotline for the prevention and surveillance of sexual violence. The Government reports that, through this hotline, 175 reports were received of cases of commercial sexual exploitation and 23 reports of trafficking for sexual exploitation in 2015. The Committee also notes that ten working sessions were held in 2016 with, among other participants, the ILO and UNICEF, to develop a public policy for the prevention and eradication of commercial sexual exploitation of children and young persons. The Committee further notes the adoption of Decree No. 87 of 2017 regulating the operation of the Fund to Combat the Sexual Exploitation of Children and Young Persons under the responsibility of the ICBF. Finally, the Government indicates that the process of development of a public policy to prevent and eradicate the commercial sexual exploitation of children and young persons (ESCNNA) advanced significantly at the end of 2016 and the beginning of 2017. **The Committee notes the efforts made by the Government and requests it to continue taking measures to protect young persons under 18 years of age against commercial sexual exploitation and trafficking for this purpose. It also requests the Government to provide information on the results achieved further to the programme “Analysis for the development of public policy to combat the commercial sexual exploitation of children and young persons in Colombia – 2015”. The Committee further requests the Government to indicate the progress achieved in the development of the ESCNNA and to provide detailed information on its content once the public policy has been adopted.**

*Articles 3(a) and 7(1). Forced recruitment of children for use in armed conflict. Penal sanctions.* In its previous comments, the Committee expressed deep concern that, despite the prohibition by the national legislation of the forced or compulsory recruitment of children for use in armed conflict and the measures taken by the Government to combat this practice, children were still being forced to join illegal armed groups. It noted the observations of the CTC and the CUT concerning the lack of dissuasive penalties that could be imposed on the perpetrators of such crimes and the lack of training of those responsible for law enforcement. It noted the many cases of recruitment of children by the Revolutionary Armed Forces of Colombia – People’s Army (FARC–EP) and the National Liberation Army (ELN). The Committee also noted the creation of the Inter-Sectoral Commission for the Prevention of the Recruitment and Use of Children by Armed Groups (Inter-Sectoral Commission) to prevent armed groups from recruiting and using children and committing acts of sexual violence against them. The International Organisation of Employers (IOE) and the National Association of Employers of Colombia (ANDI) also indicated that the ICBF had provided assistance for 5,000 child victims who had escaped from armed groups.

The Committee also previously noted the Government’s information that 2,641 investigations concerning illegal recruitment of children had been carried out in 2013, of which 1,849 remained in course. The Government indicated that between 2013 and 2014, the Office of the Attorney General received 189 reports concerning cases of recruitment and use of children in armed conflict and sexual violence. With regard to the measures taken to improve investigations and convictions of those responsible for these crimes, the Government indicated that the “technical secretary” of the Inter-Sectoral Commission had made the sentencing of cases of illegal recruitment of children automatic, at the national level. In May 2014, the “technical secretary” imposed penalties in 54 cases of illegal recruitment of children, including five cases involving 511 victims.

The Committee notes with *interest* the final agreement to bring an end to the conflict in Colombia and to build a stable and lasting peace (Final Peace Agreement) concluded on 24 November 2016 between the Government and the FARC–EP, and approved by the Senate and the Chamber of Representatives on 29 and 30 November 2016. However, it notes that the Government’s report does not contain information on the investigations conducted and the penalties imposed against persons who have recruited or used children under 18 years of age in armed conflict. **While welcoming the Final Peace Agreement concluded by the Government and the FARC–EP, the Committee requests the Government to provide information on the investigations conducted and the penal sanctions imposed against the perpetrators of such crimes, as well as the imposition of sufficiently effective and dissuasive penalties against any person found guilty of recruiting or using children under 18 years of age for armed conflict.**

*Article 7(2). Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour. Child soldiers.* The Committee recalls its previous comments concerning the measures taken by the ICBF for the protection of children and young persons demobilized from illegal armed groups, which comprise four distinct phases: identification and diagnosis; treatment; consolidation; and monitoring and follow up. The Committee also noted the integrated model of psycho-social assistance developed by the ICBF in response to the needs of children, according to their age, gender, ethnic origin and the nature of the crime committed against them, in which

800 professionals are participating. The Committee also noted that the number of children demobilized from armed groups increased from 195 in 2012 to 332 in 2014.

The Committee notes the indications of the CUT and the CTC that the ICBF is playing an important role, but is not receiving the necessary resources from the Ministry of Labour to carry out its mission. The Committee notes the CGT's indication that the use of children by armed forces continues to be a problem in Colombia, despite the peace agreement. The CGT adds that, even though the figures provided by the Government show that the number of children used in armed conflict has fallen (72 children used in 2017, compared with 203 in 2016), these statistics are too general and should include the number of children who have been demobilized and be disaggregated by gender and age. The Committee notes the Government's indication that Decree No. 891 of 28 May 2017 adds a transitional paragraph to section 190 of Act No. 1448 of 2011 on the process, for which the ICBF is responsible, of restoring the rights of children and young persons who have been demobilized following the Final Peace Agreement. It notes with *interest* that the transitional paragraph adds the possibility for children and young persons to remain in the transitional shelters envisaged for this purpose, until their age is verified by the ICBF. Section 190 of Act No. 1448 of 2011 provides that all child victims of forced or compulsory recruitment can claim compensation for the damages suffered and that the ICBF is responsible for ensuring the restitution of their rights. The Government adds that the ICBF and the enterprise Akubadabra Jurist Community have concluded the association agreement No. 1557 of 2016 for the implementation of a programme of harmonious recovery to ensure the proper return and guarantee the rights of demilitarized children and young persons. In the framework of this association agreement, the Government focused its action on the villages of Awá, Nasa, Wounnan and Emberá for the organization of consultation meetings, community workshops and intercultural meetings with a view to the reintegration of child victims of forced recruitment. Moreover, the National Council for Reintegration (CNR), established by Decree No. 2027 of 2016, plays the role, among others, of adopting special measures to care for and protect demobilized children and young persons and to follow up the programme of reintegration into civilian life. Finally, the Government indicates that point 1.3.3.5 of the Final Peace Agreement provides for the organization of awareness-raising campaigns for the eradication of child labour and the adoption of immediate measures to combat the worst forms of child labour. ***The Committee requests the Government to continue adopting and implementing effective and time-bound measures for the removal and rehabilitation of child victims of unlawful recruitment. Noting the absence of information on this subject, the Committee once again requests the Government to provide information on the number of children under 18 years of age who have been rehabilitated and integrated into their communities as a result of these measures.***

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

## Comoros

### ***Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1978)***

### ***Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1978)***

In order to provide an overview of all the issues relating to the application of the ratified Conventions on the medical examination of young persons, the Committee considers it appropriate to examine Conventions Nos 77 and 78 in a single comment.

The Committee notes the comments made by the Workers Confederation of Comoros (CTC), received on 16 August 2016 and 25 July 2017.

*Article 6 of Conventions Nos 77 and 78. Vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to certain types of work.* In its previous comments, the Committee noted that the new Labour Code of Comoros was adopted in 2012 by virtue of Act No. 12-167. Pursuant to section 130 of the Code, labour inspectors may require the examination of children by a registered physician with a view to ensuring that the work they have been assigned does not exceed their strength. Children cannot continue to be assigned to such work and must be assigned to a job that is suited to them and, if this is not possible, the contract must be terminated with payment of compensation in lieu of notice. The Government also indicated that an Order on the types of work and categories of enterprises prohibited for young persons was adopted and published in 2014. The Government further indicated that, under section 17 of the Order, children hired for work that they are prohibited to perform have to be reassigned to work that is suited to them. The Committee nevertheless reminded the Government that *Article 6* requires appropriate measures to be taken by the competent authority for the vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical disabilities or limitations. The Committee emphasized that this situation also occurs in jobs that are not generally prohibited for young persons, but in which they are found to be unsuited to work that would otherwise be allowed.

The Committee notes with *regret* that the Government has not provided any new information on this subject. ***The Committee requests the Government to take specific measures for the vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or***

*to have physical disabilities or limitations, in accordance with Article 6(1). It requests the Government to provide information on the progress achieved in this regard.*

*Article 7(2) of Convention No. 78. Scope of application and supervision of the application of the system of medical examination for fitness for employment to young persons engaged either on their own account or on account of their parents.* In its previous comments, the Committee noted that the Labour Code of 1984 did not seem to cover apprentices or children and young persons working on their own account, in itinerant trading or in any other occupation carried out in the streets or in a public place (for the latter, *Article 7(2)* also provides for measures of identification, to be determined by national laws or regulations, in order to ensure the application of the system of medical examination). The Committee also noted the observation of the CTC that non-industrial occupations are outside the scope of the labour inspectorate's supervision. The Committee further noted the Government's indication that, in the context of the revision of the national labour legislation, all the necessary measures would be examined in order to bring the legislation into conformity with the provisions of the Convention. The Committee expressed the firm hope that the Bill revising the Labour Code would be adopted in the very near future and that its provisions would give effect to *Article 7* of the Convention.

The Committee notes with *interest* that, by virtue of section 129(2) of the new Labour Code of 2012, children under the age of 15 years are prohibited from working on their own account. The Committee also notes that, under section 130 of the Labour Code, labour inspectors may require the examination of children by a registered physician with a view to ensuring that the work they have been assigned does not exceed their strength. Such an examination is mandatory when requested by the parties concerned.

However, the Committee notes the observations of the CTC that, although the legislative texts provide for the medical examination of young persons, there is no supervision by the labour inspectorate in practice. Furthermore, the CTC expresses its regret that the problem of medical examinations of young persons is far from being resolved, given the lack of a functional service in the Ministry and the fact that this issue is not a priority for the administration. The Committee recalls that, under the terms of *Article 7(2)(a)*, national laws or regulations shall determine the measures of identification to be adopted to ensure the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access. Under *Article 7(b)*, national laws or regulations shall also determine the other methods of supervision to be adopted to ensure the strict enforcement of the Convention. *The Committee therefore requests the Government to take the necessary measures to establish supervision of the application of the system of medical examination for fitness for employment to young persons engaged either on their own account or on account of their parents, in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access. It requests the Government to provide information on any progress achieved in this regard.*

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2004)**

*Article 2(3) of the Convention. Compulsory schooling and application of the Convention in practice.* In its previous comments, the Committee noted that child labour was a visible phenomenon in the country, particularly as a result of poverty and of the low school enrolment rate in some cases. In this regard, the Committee noted that the capacity of schools was very limited and that some primary and secondary schools were obliged to refuse to enrol certain children of school age. Consequently, a large number of children, particularly from poor families and disadvantaged backgrounds, were deprived of an education.

The Committee noted the Government's indication that there had been a positive trend towards gender parity in school, standing at 0.87 at primary level. However, it was less satisfactory at secondary level, where the numbers of girls in school had fallen significantly. According to the Government, particular problems in the educational situation for girls involved late enrolment, a very high repetition rate – around 30 per cent in primary school and 23 per cent in secondary school – and a high drop-out rate, with only 32 per cent of pupils completing primary education.

The Committee notes the Government's statement in its report that it is taking steps to reduce the disparity in school enrolment rates for girls and boys. The Government indicates that the school mapping system is being revised by the Ministry of Education, in conjunction with the education offices and UNICEF, with a view to boosting educational coverage and ensuring better access to education for children living in rural areas. Moreover, the Committee notes that a UNICEF country programme has been adopted for 2015–19, which aims, among other things, to support the Government's efforts to enhance children's right to education. One of the main objectives of the programme is to ensure that all children are enrolled in and complete inclusive, high-quality education, with the focus on equity and achievement.

However, the Committee notes that section 2 of Framework Act No. 94/035/AF of 20 December 1994 provides that schooling is only compulsory from 6 to 12 years of age, which is three years earlier than the minimum age for admission to employment or work, namely 15 years. Referring to the General Survey of 2012 on the fundamental Conventions, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (paragraph 371). The Committee therefore considers it desirable to raise the age of completion of compulsory schooling so that it coincides with the minimum age for admission to employment or work, as provided for in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). **Recalling that compulsory education is one of the most effective means of combating**

*child labour, the Committee strongly encourages the Government to take the necessary steps to make education compulsory until the minimum age for admission to employment, namely 15 years. Moreover, the Committee requests that the Government intensify its efforts to increase the school attendance rate and reduce the school drop-out rate, especially among girls, in order to prevent children under 15 years of age from working. The Committee requests that the Government provide information on the results achieved in this respect.*

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

## Congo

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that a large number of children were involved in economic activity but that no national policy had been adopted in this regard. It noted the Government's indication that there were no inspection reports providing any information on the presumed or actual employment of children in enterprises in Congo during the reporting period. However, the Committee noted that 25 per cent of Congolese children were involved in child labour, according to UNICEF statistics.

The Committee notes with *regret* that the Government's report still does not contain any information on the adoption of a national policy for ensuring the effective abolition of child labour. The Committee also observes that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 2014, noted that child labour and the economic exploitation of children remain widespread, particularly in the big cities (CRC/C/COG/CO/2-4, paragraph 74). *Expressing its deep concern at the large number of children working below the minimum age in the country, and given the lack of a national policy designed to ensure the effective abolition of child labour, the Committee once again urges the Government to take the necessary steps to ensure the adoption and implementation of such a policy as soon as possible. It requests that the Government provide detailed information in its next report on the measures taken in this respect.*

*Article 3(2) and (3). Determination of hazardous types of work and age of admission to hazardous work.* In its previous comments, the Committee noted that section 4 of Order No. 2224 of 24 October 1953, which establishes employment exemptions for young workers, determines the types of work and the categories of enterprises prohibited for young persons and sets the age limit for the prohibition, prohibits the employment of young persons under 18 years of age in certain hazardous types of work, and includes a list of such types of work.

The Committee notes the Government's indication that Order No. 2224 is no longer in force. The Committee also notes that section 68(d) of Act No. 4-2010 of 14 June 2010 concerning child protection (Child Protection Act) provides that any work which, by its nature or the conditions in which it is performed, is likely to harm the health, safety or morals of the child is prohibited. It also provides that a decree issued further to the opinion of the National Labour Advisory Committee shall determine the list and the types of work and the categories of enterprises prohibited for children and the age limit for the prohibition. *The Committee requests that the Government take the necessary steps to ensure the adoption as soon as possible of the decree determining the list of hazardous types of work, in accordance with section 68(d) of the Child Protection Act.*

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2008. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Sale and trafficking of children.* In its previous comments, the Committee noted the Government's statement that there is child trafficking between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work. According to the Government, the children are forced to work all day in harsh conditions by their host families, and are subjected to all kinds of hardships. The Committee noted that sections 345, 354 and 356 of the Penal Code lay down penalties for anyone found guilty of the forcible or fraudulent abduction of persons including young persons under 18 years of age. It requested the Government to indicate to what extent sections 345, 354 and 356 of the Penal Code have been implemented in practice. *The Committee requests the Government once again to supply information on the application of sections 345, 354 and 356 of the Penal Code in practice, including, in particular, statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penalties imposed.*

*Article 7(2). Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children.* In its previous observations, the Committee noted the Government's statement acknowledging that the trafficking of children between Benin and Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work is contrary to human rights. It also noted that the Government has taken certain measures to curb child trafficking, including: (a) the repatriation by the Consulate of Benin of children who have either been picked up by the national police or removed from families; and (b) the requirement at borders (airport) for minors (young person under 18 years of age) to have administrative authorization to leave the territory of Benin. The Committee asked the Government to provide information on the impact of the measures taken with regard to the rehabilitation

and social integration of children following their withdrawal from labour. It noted that the Government's report does not contain any information on this subject. ***The Committee requests the Government once again to supply information on the time-bound measures taken to remove young persons under 18 years of age from this worst form of child labour and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the impact of these measures.***

*Application of the Convention in practice.* The Committee noted that, according to the concluding observations of the Committee on the Rights of the Child on the initial report of Congo of October 2006 (CRC/C/COG/CO/1, paragraph 85), a study of the root causes and repercussions of trafficking is due to be conducted in the country. ***The Committee requests the Government to supply information on the results of this study and to supply a copy of it once it has been prepared.***

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

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

## Costa Rica

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the observations of the Costa Rican Confederation of Democratic Workers (CCTD), communicated with the Government's report.

*Article 3(a) and (b) of the Convention. Sale and trafficking of children for commercial sexual exploitation, use, procuring or offering of a child for prostitution, and court decisions.* The Committee previously noted that the trafficking of children for sexual exploitation and the smuggling of migrants, including children, particularly in the tourism sector, continued to be serious problems in the country, and that the practice of purchasing sexual services from children was still regarded as socially acceptable. The Committee noted that, according to the observations of the Confederation of Workers Rerum Novarum (CTRN), Act No. 9095 of 2013 to combat human trafficking, which establishes the National Coalition to Combat the Smuggling of Migrants and Human Trafficking (CONATT), was not implemented and that child victims of trafficking therefore continued to be in danger. The Government referred to the 2010–20 Roadmap for the prevention and eradication of child labour and its worst forms, developed in collaboration with ILO–IPEC, the objective of which is to combat the trafficking of children for commercial sexual exploitation as one of the worst forms of child labour, under the responsibility of the National Foundation for Children (PANI) and the National Directorate of Migration and Foreign Nationals (DNME). The Committee took due note of Act No. 9095, section 2(g) of which explicitly provides that priority shall be given to young victims of trafficking, and section 37(1) provides that child victims of trafficking shall have the right, in addition to the rights established for all victims of crimes, to be reintegrated into their families or their community, whichever is in their best interests. The Committee also noted that section 42 of the Act contains specific provisions respecting young persons, and particularly subsections (g) and (h), which envisage specific investigative and judicial proceedings, and that sections 74 and 75 revise the Penal Code to increase penalties for the trafficking of young persons.

The Committee notes that, according to the CCTD, despite the progress made in the protection of children and young persons, the efforts undertaken by the Government are inadequate, in view of the low number of convictions in cases of trafficking of children for commercial sexual exploitation, particularly with regard to the migrant population.

The Committee notes the indication by the Government in its report that the judicial authorities received 95 complaints concerning trafficking in 2016, ten of which resulted in a criminal conviction under section 172 of the Penal Code, which prohibits trafficking of persons, although no information is provided on the number of cases relating to victims under 18 years of age. The Government adds that many of the cases detected give rise to other types of related convictions, such as aggravated procurement or paid sexual relations with a minor. However, the Committee notes that, in its concluding observations in July 2017, the Committee on the Elimination of Discrimination against Women notes with concern the heightened risk of sex trafficking, particularly for children and migrant girls in Pacific coastal zones (CEDAW/C/CRI/CO/7, paragraph 20). ***The Committee requests the Government to continue intensifying its efforts to ensure the thorough investigation and robust prosecution of persons who commit such criminal acts, and to ensure that assistance is provided to children in all cases. Noting the absence of information on this subject, the Committee also requests the Government to indicate the specific measures taken for the implementation of the provisions of Act No. 9095 related to child victims of trafficking, the number of investigations, prosecutions and convictions, and the penalties imposed in this regard.***

*Articles 7(2). Effective and time-bound measures. Clauses (a) and (c). Preventing children from becoming engaged in the worst forms of child labour and ensuring access to free basic education for all children removed from the worst forms of child labour.* The Committee recalls its previous comment in which it noted that the *Avancemos* ("Let's Move Forward") programme consists of conditional cash transfers which are, in part, linked to access to education and the universalization of secondary education, and that in 2013 the programme benefited 133,212 young persons between the ages of 12 and 17 years and resulted in the removal of 95 young persons between the ages of 12 and 14 years from the worst forms of child labour. However, it noted the observations of the CTRN which, emphasizing the low school attendance rate in secondary education which is more pronounced in rural areas, alleged that neither the *Avancemos* programme nor the National Scholarship Fund (FONABE) had resulted in an effective increase in school attendance. Finally, the Committee noted that the Roadmap includes the objectives of: (i) reducing the number of children between the ages of 5 and 17 years engaged in work from 113,523 in 2002, to 27,811 in 2015, and then to zero in 2020; and

(ii) increasing the secondary school attendance rate from 85 per cent in 2008 to 95 per cent in 2015, and then to 100 per cent in 2020. The Government emphasized that the number of children engaged in child labour had decreased (from 49,229 in 2002 to 16,160 in 2011).

The Committee notes that, according to the CCTD's observations, school drop-out from compulsory basic education continues to be a problem in rural areas. The CCTD adds that the *Avancemos* programme and the FONABE do not establish strategies for the definitive resolution of the problem of child labour.

The Committee notes the Government's indication that, as a result of an inter-institutional cooperation agreement between the Ministry of Labour and Social Security (MTSS) and the Joint Social Assistance Institute (IMAS), cash transfers are provided to young persons under 18 years of age in a situation of poverty or extreme poverty on condition that they remain in the education system. The Committee also notes, from the Government's report on the application of the Minimum Age Convention, 1973 (No. 138), that the *Yo me apunto* ("I'm enrolling") programme has been launched by the Ministry of Public Education (MEP) to combat school drop-out and is the basis for promoting the maintenance of children in the school system, their reintegration and success at school. The objective of the programme is to provide a tool for the implementation of the Roadmap to ensure that Costa Rica is a country free of child labour. ***The Committee requests the Government to continue intensifying its efforts to improve the operation of the education system through the Avancemos and the Yo me apunto programmes and to increase the school attendance and completion rates. It also requests the Government to continue indicating the results achieved through the Avancemos, Yo me apunto and FONABE programmes, including the number of children who have been removed from the worst forms of child labour and reintegrated into the education system as a result of these programmes, disaggregated by age and gender.***

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

## Democratic Republic of the Congo

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2001)***

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that the Committee on the Rights of the Child (CRC) expressed concern at the large number of children involved in child labour in the country. It also noted that, according to the Government's initial report to the CRC, because of the economic situation, many parents allow or even send their children to do work which they are forbidden to perform by law. The Committee observed that virtually one out of two children between 5 and 14 years of age is engaged in child labour, particularly in rural areas (46 per cent in rural areas compared to 34 per cent in urban areas).

The Committee notes the Government's indication in its report that the National Plan of Action to combat the worst forms of child labour (PAN) was adopted in 2015. However, the Committee observes that, according to the Second Demographic and Health Survey (EDS-RDC II 2013–14), 38 per cent of children between 5 and 17 years of age who were questioned had worked during the week preceding the survey, among whom 27.5 per cent had worked under dangerous conditions (pages 336–337). The Committee expresses its *deep concern* at the number of children involved in child labour, including in dangerous conditions. ***The Committee urges the Government to step up its efforts to secure the elimination of child labour. It requests that the Government provide information on the application of the Convention in practice, including statistics, disaggregated by gender and age, on the employment of children and young persons, together with extracts from labour inspection reports.***

*Article 2(1). Scope of application and labour inspection.* The Committee noted previously that Act No. 015/2002 of 16 October 2002 issuing the Labour Code applies only where there is an employment relationship. It also noted that the CRC expressed concern at the prevalence of child labour in the informal economy, which frequently falls outside the protection afforded by national legislation. The Committee reminded the Government that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether or not it is performed on the basis of an employment relationship and whether or not it is remunerated. The Government indicated in this regard that it would intensify its efforts to make labour inspection more effective. The Committee noted the Government's indication that the Committee's recommendations regarding child labour in the informal economy would be taken into account when the PAN is implemented.

The Committee notes that there is no information on this subject in the Government's report. It observes that the PAN refers to the fact that labour inspection faces a particularly difficult challenge in the context of enforcing the Labour Code in certain sectors where there is a concentration of child labour, such as the informal urban economy or agriculture (page 22). In this regard, the Government plans to draw up and implement a programme whereby state law enforcement officials will collaborate in the monitoring and prohibition of child labour. It also plans to establish a community-based child labour surveillance mechanism which collaborates with the labour inspectorate and also plans to develop an institutional capacity-building programme (PAN, Part 1, actions 1.1.2 and 1.2). In this regard, referring to the General Survey of 2012 on the fundamental Conventions (paragraph 407), which indicates that the inability of the labour inspectorate to monitor outside a given area is particularly problematic when child labour is concentrated in sectors outside its coverage, the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors. ***Recalling that the Convention applies to all forms of work or***

*employment, the Committee once again requests that the Government take measures, in the context of the PAN, to adapt and strengthen the labour inspection services so as to ensure the monitoring of child labour in the informal economy, and to ensure that children benefit from the protection afforded by the Convention. It also requests that the Government provide information on the structure, functioning and work of the labour inspectorate in relation to child labour.*

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, according to the information available on the website of the Senate, a Bill establishing the fundamental principles of the national education system had been put to the vote and adopted at the ordinary session of March 2013. The Committee also noted the detailed statistics on education provided in the Government's report. It observed that the primary school completion rate is close to 65 per cent at national level. However, there are significant disparities between the regions: for example, 78.5 per cent in the Kinshasa region compared with 56.2 per cent in South Kivu. Furthermore, the primary school completion rate is much higher for boys than for girls (73.8 per cent compared with 54.7 per cent). As regards secondary education, the gross enrolment rate for the first year of secondary school is barely 47 per cent at national level. The Committee also noted that, according to the *Education for All Global Monitoring Report 2012*, published by UNESCO, although the results of household surveys suggest that the proportion of out-of-school children fell by 25 per cent between 2001 and 2010, the number of out-of-school children is probably well above 2 million, which means that the Democratic Republic of the Congo is likely to be among the five countries with the highest numbers of out-of-school children.

The Committee notes the adoption of Framework Act No. 14/004 of 11 February 2014 on the national education system (Education Act, a copy of which is attached to the Government's report), which introduces an eight-year duration for basic education. It also notes the adoption of the Sectoral Strategy for education and training for 2016–25. *In view of the fact that compulsory schooling is one of the most effective means of combating child labour, the Committee urges the Government to step up its efforts to ensure that children below the minimum age of 14 years for admission to employment or work are integrated into the education system, with a special focus on girls. It requests that the Government provide detailed information on the measures taken and the action programmes implemented to this end, and on the results achieved.*

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017, and of the International Trade Union Confederation (ITUC), received on 1 September 2017, and of the in-depth discussion on the application of the Convention by the Democratic Republic of the Congo which took place in the Conference Committee on the Application of Standards in June 2017.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted that section 187 of Act No. 09/001 of 10 January 2009 establishes a penalty of penal servitude of ten to 20 years for the enlistment or use of children under 18 years of age in the armed forces, armed groups or the police. The Committee noted the Government's indication that the Armed Forces of the Democratic Republic of the Congo (FARDC) does not recruit children under 18 years of age. However, the Committee observed that, according to the 2011 report of the United Nations (UN) Secretary-General on children and armed conflict, a large number of children were still being recruited and continued to be associated with FARDC units. The report indicated that armed groups and the FARDC were responsible for numerous serious violations against children, including physical and sexual violence, killings and maimings.

The Committee notes the observations of the ITUC according to which the serious violations committed by the FARDC have not given rise to criminal prosecutions. The ITUC also states that numerous witnesses have made allegations that FARDC officers played an active role in the enlistment of children and that the Government has sufficient information to open investigations and prosecute the suspected perpetrators of these atrocities. Lastly, the ITUC highlights the contradictory actions of the Government, which is carrying out reforms to prevent further recruitment, but at the same time allows the police and the armed forces not only to recruit children but also to commit physical and sexual violence against them.

The Committee also notes the IOE's statement that the adoption of legislation is insufficient without effective enforcement.

The Committee notes the Government's indication in its report that an action plan to combat the recruitment and use of children in armed conflict and other serious violations of children's rights by the armed forces and security services of the Democratic Republic of the Congo was adopted in 2012. The Government also indicates that one of the measures taken as part of the action plan was the appointment in 2015 of the Special Adviser to the Head of State on action to combat sexual violence and the recruitment of children into the armed forces. It also notes the Government's indication that 17 children's courts have been set up and are operational. The Committee observes that, according to the report of

20 April 2016 of the UN Secretary-General on children and armed conflict (A/70/836–S/2016/360) (2016 report), three new provincial joint technical working groups were established to accelerate the implementation of the action plan (paragraph 54). In this regard, it notes that, according to information from the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), a total of seven joint technical working groups were established in the provinces in 2017 (Goma, Bukavu, Kisangani, Lubumbashi, Kalemie, Bunia and Katanga), in addition to the national group. The Committee also takes note, according to the report of 24 August 2017 of the UN Secretary-General on children and armed conflict (A/72/361–S/2017/821) (2017 report of the Secretary-General), of the validation of standard operating procedures for age verification, the adoption of a Ministry of Defence directive for the dissemination of those procedures within the FARDC and the screening of new recruits. The report also indicates that the UN documented the arrest of at least 15 FARDC members and five Congolese National Police (PNC) officers, in particular for offences linked to the recruitment and use of children in armed conflict before 2016, and that 41 individuals (including 23 FARDC members and 11 PNC officers) were convicted of sexual violence against children and received sentences ranging from three years' imprisonment to the death penalty. The Government reported that perpetrators of sexual violence against children were convicted in 129 cases (paragraph 71).

While noting these measures, the Committee nevertheless observes that, according to the 2017 report of the Secretary-General, the UN verified that 492 children (including 63 girls) were recruited and used by armed groups in 2016, with 82 per cent of cases occurring in North Kivu. At the time of recruitment, 129 children were under 15 years of age (paragraph 63). In addition, the report indicates that at least 124 children were killed and 116 maimed (paragraph 65). The rape of 170 girls and one boy was verified, the FARDC being responsible for 64 cases and the PNC for 12 cases (paragraph 66). The Committee also notes that, according to the 2016 report of the Secretary-General, a total of 488 cases of new recruitment of children were recorded in 2015, 89 per cent of which involved armed groups in North Kivu, in addition to the cases of ten boys previously recruited by the FARDC (paragraph 45). The report also refers to 254 cases of sexual violence against children, including 68 perpetrated by the FARDC, 19 by the PNC, and two by the National Intelligence Agency (paragraph 48). Lastly, it states that 68 individuals, including high-ranking officers, were arrested, with 37 receiving sentences of up to 20 years' imprisonment for sexual violence against girls (paragraph 55).

The Committee further observes that the report of the Secretary-General on MONUSCO of 9 March 2016 (S/2016/233) refers to the fact that the Military Academies High Command (CGEM) screened new FARDC recruits and found among them 84 children, who were then demobilized. The CGEM called on the FARDC Joint Chiefs of Staff to impose sanctions on the recruiters (paragraph 48).

The Committee also notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017 (S/2017/565), between January and March 2017 MONUSCO documented 28 new cases of child recruitment by the Kamuina Nsapu militia in the Kasai provinces, where numerous cases of violence have been recorded. It also documented the killing of at least 59 children, including 25 girls, and the maiming of 44 children, including four girls (paragraph 48). The Committee also notes that, according to the MONUSCO report "Invisible survivors: Girls in armed groups in the Democratic Republic of Congo from 2009 to 2015", since the adoption of the Child Protection Act in 2009, which criminalizes the recruitment of children, a total of 8,546 children, including 600 girls, were documented as recruited by the armed groups in the Democratic Republic of the Congo (up to May 2015). Furthermore, the Committee observes that the UN Committee on the Rights of the Child (CRC), in its concluding observations of 28 February 2017 (CRC/C/COD/CO/3-5), noted that, despite some improvements, there have been reports of the involvement of children in the activities of the national armed forces and reports of collaboration of the armed forces with armed groups that are known for the recruitment or use of child soldiers (paragraph 47). The Committee also observes that, according to the report of MONUSCO and the UN Office of the High Commissioner for Human Rights (OHCHR) entitled "Accountability for human rights violations and abuses in the DRC: Achievements, challenges and way forward (1 January 2014–31 March 2016)", the number of prosecutions of members of armed groups remains very low. The report states that this is mainly due to the volatile security situation in the affected areas, which complicates investigations, particularly in terms of identifying the victims and the alleged perpetrators (paragraph 47). The report also describes the obstacles that exist, such as political considerations or de facto immunities enjoyed by certain suspected perpetrators on account of their customary powers. It adds that legal proceedings against members of armed groups would send a strong signal at national level and would also have a strong impact on the vetting of the security forces, since a conviction would make an individual ineligible to join the national armed forces (paragraphs 54–55). In this regard, the Committee notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017, MONUSCO engaged in advocacy with the military prosecutor with a view to bringing to justice the perpetrators of serious children's rights violations (paragraph 48).

The Committee expresses its *deep concern* at the large number of children who are still being recruited by armed groups, especially as the persistence of this worst form of child labour leads to other violations of children's rights, such as killings and sexual violence, which have also been committed by the armed forces. *While recognizing the complexity of the situation on the ground and the existence of armed conflict and armed groups in the country, the Committee once again urges the Government to take urgent measures to ensure the full and immediate demobilization of all children in the FARDC ranks and to put a stop in practice to the forcible recruitment of children under 18 years of age into armed groups. The Committee urges the Government to take immediate and effective measures to ensure the thorough investigation and robust prosecution of all persons, including officers in the regular armed forces, who*

***forcibly recruit children under 18 years of age for use in armed conflict, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Act No. 09/001 of 10 January 2009, including by the 17 courts established for this purpose. The Committee requests the Government to provide information on the number of investigations conducted, prosecutions brought, convictions issued against such persons and sanctions imposed.***

*Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child labour in mines.* In its previous comments, the Committee noted the observations of the Confederation of Trade Unions of the Congo (CSC) that young persons under 18 years of age are employed in mineral quarries in the provinces of Katanga and East Kasai. It noted the UN Special Rapporteur's observation that military groups were recruiting children for forced labour for the extraction of natural resources. The Committee observed that, although the legislation is in conformity with the Convention on this point, child labour in mines was a problem in practice. The Committee noted UNICEF statistics indicating that nearly 50,000 children are working in mines in the Democratic Republic of the Congo, including 20,000 in the province of Katanga (south-east), 12,000 in Ituri (north-east) and some 11,800 in Kasai (centre).

The Committee notes the observations of the ITUC indicating that a 2016 Amnesty International report revealed that children work in the mines for up to 12 hours per day, carrying heavy sacks of rocks and earning only between US\$1 and US\$2 per day. The report also states that children work in the open air, in very high temperatures or rain, without any protective clothing and in constant contact with heavy concentrations of cobalt. The ITUC also reports that the climate of impunity that prevails regarding the employment of children in the mining sector is a direct consequence of the ineffectiveness and incompetence of the labour inspectorate. It adds that penalties for the use of forced labour remain inadequate and are not an effective deterrent.

The Committee also notes that, in the Conference Committee on the Application of Standards, the Worker member of the Democratic Republic of the Congo referred to the 2015 Amnesty International report on five mining sites in Katanga, according to which the health risks faced by children in mines include a potentially fatal lung disease, respiratory sensitization, asthma, shortness of breath and decreased pulmonary function.

The Committee also notes the observations of the IOE to the effect that if the human resources allocated to law enforcement are sparse, the revenue from these provinces and from the mining sector must be reinvested in recruiting the necessary staff, in the interests of the country and of its children.

The Committee notes the Government's indication that the economy of the Democratic Republic of the Congo is mainly based on the exploitation of natural resources, involving hazardous operations in mining and quarrying, forestry, oil and gas. It adds that children between 16 and 18 years of age are most exposed to hazardous work in small-scale mining. The Committee takes notes of the Ministerial Order No. 0058/CAB.MIN/MINES/01/2012 of 29 February 2012 issuing procedures for the classification and authorization of gold- and tin-mining sites in the provinces of Katanga, Maniema, North Kivu, South Kivu and Eastern Province, attached to the Government's report. Section 8 of the Order provides that the socio-economic situation of the region of the Great Lakes in general, and of the Democratic Republic of the Congo in particular, must be taken into account as an indicator and that steps must be taken to ensure that children are not employed on mining sites. The Committee also notes the Government's indication that an inter-ministerial committee responsible for monitoring child labour in mines and on mining sites was set up in 2016. It indicates that the mandate of this committee is to: (1) coordinate and facilitate the various initiatives for combating child labour in mines and on mining sites; (2) act as the Government's advisory, monitoring and follow-up body vis-à-vis the competent ministries and departments; and (3) engage in advocacy vis-à-vis third parties. The report also states that the abovementioned committee has drawn up a three-year action plan for 2017–20 with the general objective of coordinating actions on the ground to put an end to the presence of children in mining operations by 2020. The plan contains five specific objectives, namely: (i) monitor and evaluate the implementation of actions to combat child labour in mines and on mining sites; (ii) resolve the issue of the presence of children; (iii) step up the enforcement of measures for removing children from mineral supply chains, giving priority to "3TG" (tungsten, tantalum, tin and gold); (iv) implement corrective measures on the ground proposed by the competent ministries and departments; and (v) adopt a communication strategy. Lastly, the Committee notes that, according to information gathered by the ILO in the Democratic Republic of the Congo, a draft sectoral strategy was formulated and discussed at a workshop in September 2017 and is currently awaiting final adoption. The prime objective of this strategy is the gradual removal of children from small-scale mines and small-scale mining sites, and their social reintegration within their national community. The strategy also reproduces the objectives of the three-year action plan, with the additional objective of combating impunity. The Committee notes that the strategy states that an operational plan must be formulated as soon as possible. While noting the measures taken by the Government, the Committee once again expresses ***deep concern*** at the large number of children working under dangerous conditions in mines. ***The Committee urges the Government to take immediate and effective measures, as a matter of urgency, to eliminate forced child labour and hazardous work for children under 18 years of age in mines. In this regard, it requests the Government to take the necessary steps to ensure the thorough investigation and robust prosecution of offenders, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the actions taken and the results achieved as part of the implementation of the three-year action plan for 2017–20 and of the sectoral strategy for 2017–25, once the latter has been officially adopted.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration.*

1. *Child soldiers.* Further to its previous comments, the Committee notes the Government's indication that it is consolidating data on children who have been the beneficiaries of demobilization and social and economic reintegration programmes. The Committee notes that, according to the 2017 report of the Secretary-General, a total of 1,662 children (including 177 girls) were separated from armed groups in 2016 (paragraph 74). In 2015, a total of 2,045 children were separated from armed groups and ten boys were separated from the FARDC (2016 report of the Secretary-General, paragraph 53). The Committee also observes that, according to the report of the Secretary-General on MONUSCO of 10 March 2017 (S/2017/206), between January and March 2017, 61 boys and nine girls were separated or escaped from armed groups (paragraph 33). In addition, it notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017 (S/2017/565), between March and June 2017 at least 269 children (including 14 girls) were separated or escaped from armed groups (paragraph 47). The Committee also notes that the MONUSCO report "Invisible survivors: Girls in armed groups in the Democratic Republic of Congo from 2009 to 2015" highlights the harsh reality faced by girls, half of whom have been subjected to sexual violence and often remain behind in armed groups for fear of stigmatization. In this regard, the Committee notes that the CRC, in its concluding observations of 2017, indicates that the human and financial resources for the demobilization, rehabilitation and reintegration of child soldiers are scarce, disproportionately affecting girl soldiers who comprise up to 30 per cent of children involved with the armed forces and armed groups (paragraph 47(e)). The CRC also refers to the fact that girl soldiers face stigmatization and rejection by their communities and thus are sometimes obliged to rejoin armed groups (paragraph 47(f)). Furthermore, the Committee observes that the CRC, in its concluding observations of 28 February 2017 relating to the sale of children, child prostitution and child pornography (CRC/C/OPSC/COD/CO/1), expresses concern at the fact that a significant number of girls remain victims of sexual exploitation and forced labour in the hands of armed groups (paragraph 40) and that there is no clear procedure or referral service for the protection and care of child victims of sexual exploitation (paragraph 36). In this regard, the Committee notes that in 2016 UNICEF supplied medical, psycho-social, economic and legal assistance to 100,000 children who were subjected to sexual and gender-based violence (2016 UNICEF annual report on the Democratic Republic of the Congo, page 1). ***The Committee urges the Government to intensify its efforts and take effective and time-bound measures to remove children from the armed forces and armed groups, as well as from forced labour and sexual exploitation, and to ensure their rehabilitation and social integration, with a particular focus on the demobilization of girls. The Committee also requests the Government to provide information on the number of child soldiers who have been removed from the armed forces and armed groups and have been reintegrated through appropriate assistance with rehabilitation and social integration.***

2. *Children working in mines.* The Committee previously noted that several projects for the prevention of child labour in mines and the reintegration of these children through education were being implemented, aimed at covering a total of 12,000 children, of whom 4,000 were to be covered by prevention measures and 8,000 were to be removed from labour and reintegrated through vocational training. The Government also indicated that more than 13,000 children were removed from three mining and quarrying locations in Katanga, East Kasai and Ituri as part of the work of the non-governmental organizations Save the Children and Solidarity Centre. These children were then placed in formal and non-formal education structures and also in apprenticeship programmes. However, the report also indicated that, in view of the persistence of the problem, much remained to be done. The Committee further noted that Congolese girls were victims of forced prostitution in improvised prostitution centres, in camps, around mining sites and in markets.

The Committee notes that the Conference Committee urged the Government to step up its efforts to prevent children from working in mining and other hazardous types of work and to provide the necessary and appropriate direct assistance for their removal from the worst forms of child labour.

The Committee notes that there is no information in the Government's report on the number of children removed from mining work. However, it observes that the stated aim of part 5 of the draft sectoral strategy for combating child labour in mines – namely, providing protection and care for children – is to remove children from mines and cater for their needs in terms of protection and socio-economic reintegration. In this regard, planned actions are to identify the number of children working in informal mines, to implement alternative and sustainable solutions in educational and socio-economic terms, and to reinforce community mechanisms for prevention and for the protection and promotion of children's and women's rights. The Committee also notes that a draft plan to remove children from supply chains in small-scale mining has been adopted. ***The Committee requests the Government to intensify its efforts to prevent children under 18 years of age from working in mines and from being subjected to prostitution on mining sites. It also requests the Government to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour and to ensure their rehabilitation and social integration. It further requests the Government to send information on the measures taken under the three-year action plan for 2017–20 and the sectoral strategy for 2017–25, once the latter has been officially adopted, and on the results achieved.***

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

## Djibouti

### Minimum Age Convention, 1973 (No. 138) (ratification: 2005)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Article 1 of the Convention. National policy to ensure the effective abolition of child labour; application of the Convention in practice.* In its previous comments, the Committee noted the Decent Work Country Programme (DWCP) 2008–12 for Djibouti, which prioritized, inter alia, the improvement of conditions of work by promoting national and international labour standards, with a particular focus on child labour. The Committee also noted the adoption of the National Strategic Plan for Children in Djibouti (PSNED) for the 2011–2015 period, with the goal of establishing a protective environment conducive to the observance of the fundamental rights of children. The Committee asked the Government to provide information on the implementation of the DWCP and the PSNED and on the results achieved regarding the progressive elimination of child labour. It also asked the Government to provide information on progress made in framing a national policy to combat child labour.

The Committee notes that, according to UNICEF, for the 2002–12 period, 7.7 per cent of children between five and 14 years of age in Djibouti were engaged in activities deemed to be work. The Committee notes the Government's indication in its report that it is not in a position to communicate the results achieved through the PSNED since the studies conducted are still in draft form. The Government also indicates that the DWCP could not be adopted owing to a lack of agreement with the trade unions and it hopes for a resumption of social dialogue, with ILO assistance, with a view to adoption and implementation of the DWCP in the near future. The Committee also notes the "Djibouti Compendium of Statistics" attached to the Government's report and the Government's statement that the Directorate of Statistics and Demographic Studies (DISED) has not undertaken any survey in relation to child labour. ***The Committee firmly hopes for a resumption of social dialogue without delay and requests that the Government take the necessary steps to ensure the effective implementation of the DWCP and the PSNED. It requests that the Government provide information on the results achieved regarding the progressive elimination of child labour and on progress made in framing a national policy to combat child labour. Lastly, the Committee again requests that the Government take the necessary measures to ensure that studies on the extent and nature of child labour in Djibouti are conducted in the near future, and that the results are then communicated to the Office.***

*Article 2(1). Scope of application and labour inspection.* The Committee previously noted that, by virtue of section 1 of Act No. 133/AN/05/5ème issuing the Labour Code (hereinafter: Labour Code), the Labour Code applies only to employment relationships. It also noted the Government's indication that the provision on the minimum age for access to work is observed in the formal sector but is not applied effectively in the informal economy. The Committee further noted that, despite new Act No. 199/AN/13/6ème, supplementing Act No. 212/AN/07/5ème establishing the National Social Security Fund, which extends health-care benefits to all self-employed workers in the informal economy, the Government recognized that the lack of structure in the informal economy prevented the identification of issues faced by young workers in the sector.

The Committee notes the Government's indication that it hopes to submit the question of informal work to the National Labour Council, with a particular focus on the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The Committee recalls that the Convention applies to all branches of economic activity, whether formal or informal, and that it covers all types of employment or work, whether or not it is effected on the basis of a dependent employment relationship, and whether or not it is remunerated. ***The Committee therefore requests that the Government take steps to ensure that the protection afforded by the Convention is secured to children under 16 years of age working in the informal economy, particularly by adapting and strengthening the labour inspectorate in order to improve labour inspectors' capacity to identify cases of child labour. It requests that the Government provide information on this matter and also to communicate the results achieved.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that, according to section 4 of Act No. 96/AN/00/4ème setting out the policy for Djibouti's education system, the State guarantees education for children from the age of six to 16 years. The Committee also noted that, in 2006, the net primary school enrolment rate was 66.2 per cent and at secondary level the rate was 41 per cent.

The Committee notes that, despite the improvements in school attendance, Djibouti still has a low school enrolment rate and that the goal, established in the PSNED, of achieving a 100 per cent enrolment rate for children in the 6–10 age group by 2015 was not achieved. Indeed, in 2014, according to the UNESCO Institute of Statistics, the attendance rate was 67.39 per cent in primary education and 46.35 per cent in secondary education. ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee requests that the Government intensify its efforts and take measures that will ensure children's participation in compulsory basic schooling, or in an equivalent setting. It requests that the Government provide information on the recent measures taken to increase the school attendance rate, at both primary and secondary levels, so as to prevent children under 16 years of age from working. It further requests that the Government provide recent statistics on the primary and secondary school enrolment rates in Djibouti.***

*Article 3(1). Age of admission to hazardous work.* The Committee previously noted that, according to section 112 of the Labour Code, at the request of a labour inspector, women or young persons between 16 and 18 years of age may not be placed in employment recognized as being beyond their strength by an approved doctor. However, the Committee observed that the national legislation does not appear expressly to establish, as *Article 3(1)* of the Convention requires, a minimum age of 18 years for 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. ***Noting once again the lack of information on this matter in the Government's report, the Committee again requests that the Government take the necessary measures to ensure that no person under 18 years of age is authorized to engage in hazardous work, in accordance with Article 3(1). It requests that the Government provide information on the progress made in this regard.***

*Article 3(2). Determination of hazardous types of work.* The Committee recalls that, according to section 110 of the Labour Code, the employment of young persons in domestic work, hotels and bars is strictly prohibited, with the exception of employment strictly in the area of catering. Furthermore, under section 111 of the Labour Code, an order adopted on the proposal of the Minister of Labour and the Minister of Health, after consultation with the National Council for Labour, Employment and Social Security (CONTESS), shall determine the nature of the work and the categories of enterprise prohibited for all women,

pregnant women and young people, and the applicable minimum age. The Committee previously asked the Government to adopt such an order on jobs and enterprises prohibited for young people.

The Committee again notes the Government's indication that the order in question has been drawn up and that it has pledged to refer the adoption thereof to CONTESS. It also indicates that no controls have been undertaken to date by the labour inspectorate on hazardous types of work performed by young people. **The Committee again requests that the Government take the necessary steps as a matter of urgency to ensure that the order determining the nature of the work and the categories of enterprise prohibited for young people under 18 years of age is adopted under section 111 of the Labour Code in the near future.**

*Noting the interest expressed by the Government in obtaining technical assistance from the Office, the Committee invites the Government to avail itself of ILO technical assistance in order to facilitate the application of the Convention.*

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

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)**

The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2016.

*Articles 3(b) and 7(2) of the Convention. Use, procuring or offering of a child for prostitution or illicit activities; effective and time-bound measures. Clause (b). Assistance for removing children from the worst forms of child labour.* The Committee previously noted that the Committee on the Rights of the Child (CRC) once again expressed its concern at the high number of children, particularly girls, involved in prostitution and at the lack of facilities providing services for sexually exploited children.

The Committee notes the Government's indication that it does not have up-to-date information on this matter. **The Committee urges the Government to take effective and time-bound measures to remove children from prostitution, and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the progress achieved in this respect.**

*Articles 3(d) and 4(1). Hazardous work and determination of these types of work. As regards the prohibition on employing children under 18 years of age in work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, as prescribed by Article 3(d) of the Convention, and also the adoption of a list of hazardous types of work, the Committee refers to its detailed comments relating to the Minimum Age Convention, 1973 (No. 138).*

*Article 6. Programmes of action to eliminate the worst forms of child labour.* The Committee previously noted that in the context of activities carried out under the Decent Work Country Programme (DWCP) for Djibouti for 2008–12, which prioritized, inter alia, the improvement of conditions of work through the promotion of national and international labour standards, with a particular focus on child labour, one of the objectives was that the ILO constituents and the social partners should work together to prevent and eliminate the worst forms of child labour. In this regard, it was planned to formulate and implement a national plan of action for the elimination of the worst forms of child labour.

The Committee notes the Government's indication that the DWCP has not been adopted owing to a lack of agreement between the Government and the trade unions but that it hopes that, with the help of the Office, social dialogue can resume and that the national plan of action for the elimination of the worst forms of child labour will be adopted and implemented. **The Committee firmly hopes that social dialogue will resume as soon as possible. It again requests the Government to take immediate and effective measures to ensure that the national plan of action for the elimination of the worst forms of child labour is formulated, adopted and implemented as soon as possible and to provide information on the progress made in this respect.**

*Article 7(2)(d). Identifying children at special risk. 1. HIV/AIDS orphans.* In its previous comments, the Committee noted that despite the measures taken by the Government in favour of orphans and vulnerable children (OVCs), the number of HIV/AIDS orphans had increased (to 8,800 in 2011).

The Committee notes that the Government does not supply any information on the measures taken to prevent the engagement of HIV/AIDS orphans in the worst forms of child labour. However, the Committee notes that according to the UNICEF publication *The state of the world's children 2016: A fair chance for every child*, a total of 6,000 children were orphaned as a result of HIV/AIDS in 2014. It also notes that the Ministry of Health has drawn up a National Health Development Plan (2013–17), which indicates that in the context of the Horn of Africa Partnership (HOAP) to address HIV vulnerability and cross-border mobility, the Government renewed its commitment to intensifying and strengthening inter-ministerial collaboration at the national and subregional levels in order to stop the spread of HIV/AIDS and reverse the current trend of this scourge. **Recalling that HIV/AIDS orphans are at greater risk of involvement in the worst forms of child labour, the Committee again requests the Government to supply information on the impact of measures, policies and plans aimed at preventing the engagement of HIV/AIDS orphans in the worst forms of child labour, and on the results achieved.**

*2. Street children.* The Committee previously noted the Government's statement that most of the children living and working on the streets were of foreign origin and often worked as beggars or shoeshine boys or girls. It also noted that the CRC continued to express concern at the very high number of children still on the streets and at the continued exposure of these children to prostitution, sexually transmissible infections, including HIV/AIDS, economic and sexual exploitation, and violence.

The Committee notes that the Government does not provide any information in this respect. However, it notes that a paper entitled *Humanitarian action for children*, published by UNICEF in 2016, indicates that 200 street children received social assistance through the humanitarian action of UNICEF, with the collaboration of the Government. **Recalling that street children are particularly exposed to the worst forms of child labour, the Committee again urges the Government to take immediate and effective measures to protect them from the worst forms of child labour and ensure their rehabilitation and social reintegration, and also to provide information on progress made in this respect.**

*Application of the Convention in practice.* The Committee previously noted that the CRC observed that there were gaps in the surveys that had been carried out in the areas of poverty, education and health, and that there was insufficient capacity to centralize and analyse population data. The Committee notes the Government's wish to obtain technical assistance from the Office with regard to drawing up statistics. **The Committee requests the Government once again to take steps to ensure the**

*availability of statistics on the nature, extent and trends of the worst forms of child labour, disaggregated by age and gender, and on the number of children covered by the measures giving effect to the Convention.*

*Noting the interest expressed by the Government in obtaining technical assistance, the Committee invites the Government to avail itself of technical assistance from the Office in order to facilitate the implementation of the Convention.*

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

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

## Dominica

### Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 2(2) of the Convention. Raising the initially specified age for admission to employment or work.* Noting that the Government initially specified a minimum age of 15 years upon ratification, the Committee observes that the Education Act of 1997 provides for a minimum age for admission to work of 16 years of age. *In this regard, the Committee takes the opportunity to draw the Government's attention to the provisions of Article 2(2) of the Convention which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. This allows the age fixed by the national legislation to be harmonized with that provided for at the international level. The Committee would be grateful if the Government would consider sending a declaration of this nature to the Office.*

*Article 3(1). Minimum age for admission to hazardous work.* The Committee previously noted that, according to section 7(1) of the Employment of Women, Young Persons and Children Act, no young person (under 18) shall be employed or work during the night in any public or private industrial undertaking, other than an undertaking in which only members of the same family are employed. However, the Committee observes that there is no other provision which prohibits the employment of young persons in work which is likely to jeopardize their health, safety or morals. *In this regard, the Committee requests the Government to take the necessary measures to ensure that the performance of hazardous work is prohibited for all persons under 18 years of age.*

*Article 3(2). Determination of types of hazardous work.* The Committee notes the Government's statement in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), in 2009 that the social partners will be consulted for the determination of the list of types of hazardous work. *Recalling that, pursuant to Article 3(2) of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, the Committee requests the Government to provide information on any progress made with regard to the determination of the list of types of hazardous work to be prohibited for persons under 18 years.*

*Article 7(3). Determination of types of light work.* The Committee notes that while section 46(3) permits children from the age of 14 to be employed during school vacations (i.e. in light work), but observes that there does not appear to be a determination of the types of light work permitted for these children. In this regard, the Committee recalls that, pursuant to *Article 7(3)* of the Convention, the competent authority shall determine what light work is and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. *The Committee therefore requests the Government to provide information on any measures taken or envisaged to determine the hours during which and the conditions in which light work may be undertaken by children above the age of 14 during vacations from school, pursuant to Article 7(3) of the Convention.*

*Article 9(3). Keeping of registers.* The Committee previously noted that section 8(1) of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists by the employer of all persons employed who are less than 16 years of age. In this regard, the Committee recalled that *Article 9(3)* of the Convention requires the keeping of such registers for all persons who are less than 18 years of age. *Noting an absence of information on this point in the Government's report, the Committee once again requests the Government to take the necessary measures to ensure that registers be kept and made available by the employer in respect of all children under 18 years of age. It requests the Government to provide information on any measures taken in this regard.*

*Application of the Convention in practice.* The Committee notes the Government's statement in its report submitted under Convention No. 182 in 2009 that measures will be taken to broaden the existing mandate of the national inspectorate in order to cover child labour issues, in consultation with the social partners. *The Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons, extracts from the reports of inspections services and information on the number and nature of violations detected involving children and young persons.*

*The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. The Committee invites the Government to consider technical assistance from the ILO to bring its legislation into conformity with the Convention.*

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

## Dominican Republic

### Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* In its previous comments, the Committee noted the National Plan of Action 2012–16, which included among its priorities the improvement of the

quality and access to basic education, and the reduction of the drop-out rate from secondary school. It also noted that during the period 2006–16 the net school attendance rate at primary school increased from 88 per cent for girls and 84 per cent for boys, to 91 per cent and 93.3 per cent respectively, and that the net school attendance rate at secondary school rose from 39 per cent for girls and 27 per cent for boys, to 66.5 per cent and 57.7 per cent respectively.

The Committee notes the Government's indication in its report that 4 per cent of GDP is allocated to education. The Government adds that Decree No. 546-12 aims to eliminate illiteracy among 938,000 people within two years. The Committee also notes the Government's indication that 25,000 new classrooms and 3,776 educational centres will be created over the next two years, for the benefit of over 1,008,417 students. The Government also refers to the Ten-year Education Plan 2008–18, the objective of which is to improve the supply of education and increase school attendance. Policy No. 7 of the Plan aims to promote education for all, by providing assistance to students from underprivileged environments, including through the provision of school meals, uniforms, backpacks and other school supplies. While noting the substantial increase of net school attendance at the secondary level, as well as of the Ten-year Education Plan 2008–18, the Committee observes the major disparities that persist in secondary school attendance in relation to the rate for primary school. ***It therefore requests the Government to reinforce the efforts made for the effective implementation of the Ten-year Education Plan 2008–18 so that all children complete complete compulsory education, including secondary education, that is, until at least the age of 14 years.***

*Article 3(3). Authorization to employ children in work considered to be hazardous from the age of 16 years.* The Committee previously noted that section 251 of the Labour Code, which prohibits minors under 16 years of age from carrying out hazardous or unhealthy types of work, is too vague, as it establishes neither the conditions under which minors over 16 years of age may be engaged in work considered to be hazardous, nor the rules for their protection and training, as required by *Article 3(3)* of the Convention.

The Government refers to Resolution No. 52/2004 on hazardous and unhealthy types of work prohibited for persons under 18 years of age. Paragraph 1 of the Resolution establishes the principle of the general prohibition of hazardous types of work for all young persons under 18 years of age, and paragraph 2 draws up a detailed list of the prohibited types of work and tasks. The Committee notes with *interest* that paragraph 3 of the Resolution authorizes young persons aged 16 and 17 years to engage in certain types of work prohibited in paragraph 2, on condition that: (i) the work is indispensable for learning in the context of a vocational training course; and (ii) the safety and health of the young person are guaranteed and the work is carried out under the supervision and control of a competent person working for the training centre. ***The Committee requests the Government to provide information on the implementation in practice to Resolution No. 52/2004 on hazardous and unhealthy types of work prohibited for persons under 18 years of age, including statistical data on the number and nature of the violations reported and the penalties imposed.***

*Application of the Convention in practice.* The Committee previously noted that the sectors of economic activity most affected by child labour are services in urban areas and agriculture in rural areas and that there appear to be difficulties in the implementation of the legislation on child labour, with the result that child labour continues to be a problem in practice in the country. It noted that, within the framework of the ILO–IPEC Time-bound Programme (TBP) on the worst forms of child labour, the Government had implemented several programmes of action for the elimination of child labour in the agricultural sector and in services in urban areas, and had adopted a National Strategic Plan (PEN) for the elimination of the worst forms of child labour (2006–16), with the objective of ensuring the protection of the fundamental rights of children and young persons by 2016 and eliminating child labour by 2020. The Plan included the objective of the integration of 200,000 new low-income families into the “Progress with Solidarity” programme, for which the requirement for access for families is that children do not work. The Government also reported the Roadmap to make the Dominican Republic a country free of child labour, and particularly the worst forms of child labour, as an initiative to reinforce the objectives of the National Strategic Plan to eradicate child labour by 2020.

The Committee however noted that nearly 304,000 children between the ages of 5 and 17 years were engaged in work (12 per cent of this age group) and that, of these, 212,000 (or 8 per cent of the same age group) were engaged in work considered to be hazardous.

The Committee notes the Government's indication that it has developed alliances with churches, municipal authorities, local governments and non-governmental organizations to more effectively combat child labour in all its forms. The Government adds that labour inspections take into account the prohibition of employing young persons under 18 years of age in hazardous types of work. The Committee notes that the Government refers once again to the PEN and to the Roadmap, but does not provide detailed information on their implementation or the results achieved. It also notes that the National Household Survey (ENHOGAR) 2009–10 has not updated the statistical information available on the situation with regard to work by children and young persons in the country. The Committee also notes that the Committee on the Rights of the Child, in its concluding observations in March 2015, expressed concern at the high prevalence of child labour in the country and at the insufficient measures taken to address child domestic labour (CRC/C/DOM/CO/3-5, paragraph 65). ***The Committee requests the Government to intensify its efforts to ensure the effective implementation of the PEN and of the Roadmap and requests it to provide detailed information on the results achieved in the elimination of child labour by 2020. The Committee once again requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young***

persons compiled through the ENHOGAR, relevant extracts from the reports of the inspection services and, finally, data on the number and nature of the violations detected involving children and young persons.

The Committee is raising another matter in a request addressed directly to the Government.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children for commercial sexual exploitation, and penalties.* The Committee previously noted that the Dominican Republic is a source, transit and destination country for men, women and children who are trafficked for the purposes of commercial sexual exploitation and forced labour. It further noted that, despite the severe penalties set out in the national legislation, the problem remained widespread. The Committee noted the implementation of the National System of Monitoring and Information on Forced Labour (INFOSITI), a project that has received assistance from ILO–IPEC through a project funded by Spain. The Government also indicated that it was developing a system of data collection on child labour through the labour inspectorate, as well as protocols for the management of information and inter-institutional responses. Despite these measures, the Committee noted the high numbers of Haitian children who are victims of trafficking in the Dominican Republic.

The Committee notes the Government’s indication in its report that a criminal investigation unit has been established to investigate cases of trafficking under the responsibility of the Office of the Public Prosecutor, which is composed of 41 members trained by the Federal Bureau of Investigation (FBI). The Committee also notes the Government’s indication once again that a review of the Penal Code has been initiated with a view to strengthening the penalties established for the sale and trafficking of children and their commercial sexual exploitation. The Government adds that it is currently undertaking a study to gather information on cases of trafficking of Dominican women abroad between 2009 and 2015. The Committee also notes that, according to the 2016 report of the Ministry of Foreign Affairs, the Dominican Republic has registered 17 cases of sexual exploitation, six cases of commercial sexual exploitation and two cases of child pornography. However, the Committee notes that the Committee on the Rights of the Child (CRC), in its concluding observations of March 2015, continued to express concern at the fact that sexual exploitation is still perceived as a private matter, which contributes to the high level of impunity in this field (CRC/C/DOM/CO/3-5, paragraphs 33 and 35). ***The Committee is therefore once again bound to urge the Government to intensify its efforts to strengthen the capacities of the law enforcement agencies so that all those engaged in acts involving the trafficking of children for sexual or labour exploitation be subjected to robust prosecution and dissuasive penalties. It requests the Government to provide information on the results achieved, in particular with regard to the training of the Criminal Investigation Unit. It also once again requests the Government to provide information on the implementation of the INFOSITI and to provide the statistics gathered in this context, particularly on the number of violations reported, investigations, prosecutions, convictions and penal sanctions applied in cases of violations of the legal provisions prohibiting the sale and trafficking of children. Finally, it requests the Government to provide information on the progress achieved in the amendment of the Penal Code.***

*Article 6. Programmes of action. Commercial sexual exploitation.* In its previous comments, the Committee noted the ILO–IPEC project entitled “Developing a Roadmap to make Central America, Panama and the Dominican Republic a Child Labour Free Zone”, which was to receive assistance from the National Council for Children and Young Persons (CONANI), targeting child victims of commercial sexual exploitation. The Committee also noted that the prevention and eradication of child labour was included in the United Nations Development Assistance Framework (UNDAF) 2012–16.

The Government refers to the launching of the campaign “*No hay excusas*” (“No excuses”), with the technical and financial support of UNICEF, intended to prevent the sexual exploitation of children and young persons. Well-known personalities from artistic circles in the country have participated in the campaign, which has been broadly disseminated in the media. However, the Committee notes that the CRC, in its concluding observations, remained concerned at the lack of appropriate care and rehabilitation programmes for children victims of sexual exploitation (CRC/C/DOM/CO/3-5, paragraph 33). The CRC also expressed particular concern at the inadequate supervision of institutions by CONANI (paragraph 41). ***While noting the measures taken by the Government, the Committee requests it to strengthen its efforts to combat the commercial sexual exploitation of children. Noting the absence of information on this subject, it requests the Government to provide information on the impact of the Roadmap and of the “No hay excusas” campaign in this field, including in terms of the number of children that were reached. To the extent possible, the information should be disaggregated by age and gender.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing children from becoming engaged in the worst forms of child labour. Commercial sexual exploitation in the tourism industry.* In its previous comments, the Committee noted that the ILO–IPEC regional project against the commercial sexual exploitation of children envisaged the strengthening of national institutional capacities. It noted that greater institutional coordination had been promoted through specialized technical assistance granted to the Inter-institutional Commission against the Abuse and Commercial Sexual Exploitation of Children.

The Committee notes the Government’s indication that the Ministry of Labour, through the National Steering Committee to Combat Child Labour, and with the assistance of local authorities, has developed a pilot plan and has accordingly opened 18 vigilance units, mainly in touristic areas such as Boca Chica, Juan Dolio y Guayacanes. The

Government adds that a process of awareness raising for actors in the tourism economy, including the Specialized Tourist Safety Unit (CESTUR) already exists. However, the Committee notes that the Government has not provided any information on the resources allocated in the context of the awareness-raising process for the effective prevention of the commercial sexual exploitation of children. Finally, the Committee notes that the CRC expressed concern at the high prevalence of sexual exploitation by foreign tourists, particularly affecting children of Haitian descent (CRC/C/DOM/CO/3-5, paragraph 33). ***The Committee therefore requests the Government to intensify its efforts and to provide information on the measures taken or envisaged to raise the awareness of the actors in the tourism industry. It also requests it to provide further information on the work and functions of the vigilance units and the activities of the CESTUR. The Committee once again requests the Government to provide information on the implementation of the Regional Project against Commercial Sexual Exploitation in relation to the prevention of the commercial sexual exploitation of children.***

*Clause (b). Direct and necessary assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Commercial sexual exploitation.* Further to its previous comments, the Committee notes the Government's indication that the *Caso a caso* project, financed by the International Organization for Migration (IOM), establishes a forum to provide guidance to children and young persons who are victims of commercial sexual exploitation. It also notes the Government's indication that one of its greatest successes has been the establishment of the first shelter for victims of trafficking and sexual exploitation. However, the Committee notes the absence of detailed information on the number of children received in the shelter and the measures taken for their rehabilitation and social integration. ***The Committee therefore requests the Government to provide further information on the shelter established in the framework of the Caso a caso project and to specify the number of children received by the shelter. It also requests the Government to indicate whether specific social and medical follow-up programmes are envisaged and implemented for children victims of commercial sexual exploitation.***

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

## Egypt

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention. National policy on the effective abolition of child labour and application of the Convention in practice.* The Committee previously noted that, according to the findings of the National Child Labour Survey of 2010 conducted by the ILO and the Central Agency for Public Mobilization and Statistics, out of Egypt's 17.1 million children, an estimated 1.59 million children aged between 5 and 17 years were engaged in child labour (approximately 9.3 per cent), 21 per cent of whom were girls and 79 per cent boys. Almost half of the employed children were engaged in hazardous non-wage work, mostly as unpaid family workers; about 9 per cent of working children between the ages of 5 and 9 years were engaged in hazardous wage work; this proportion increased steadily with age, reaching 48 per cent for 15 to 17 year-old boys and 28 per cent for 15 to 17 year-old girls. The majority of children worked in agriculture (63.8 per cent), followed by 17.7 per cent in the industrial sector and 18.5 per cent in services.

The Committee notes the Government's information in its report regarding the measures taken to combat child labour in Egypt. The Government indicates that, as a result of the project implemented in collaboration with the ILO and the World Food Programme, "Combating Worst Forms of Child Labour by Reinforcing Policy Response and Promoting Sustainable Livelihoods and Educational Opportunities in Egypt" 2010–2014 (CWCLP), awareness-raising activities were conducted aimed at children who were exposed to child labour, and their families; 1,365 community schools in 16 governorates were identified for a needs assessment; 156 schools were readapted to be able to integrate targeted children; and 110,000 children were withdrawn from the labour market. The Government also indicates that a Memorandum of Understanding was signed with the ILO, that two workshops on the formulation of a national plan following the project were held in June 2014, and that a first draft of a national plan was prepared, which is currently under examination for all purposes of developing and implementing its final version. In this regard, the Committee notes that the ILO continues its work in supporting the national constituents in combating child labour through a project aimed at strengthening the capacity of the Egyptian Government, workers' and employers' organizations from 2016 to 2017. Among the expected outcomes of the project are the finalization of a National Action Plan on Combating the Worst Forms of Child Labour (NAP-WFCL) in Egypt and supporting the constituents and relevant partners in its implementation; the promotion of an upgraded apprenticeship system for working age girls and boys; and raising awareness on the notion of child labour among constituents, institutions and society.

However, the Committee notes that, according to the 2016 UNICEF report "Children in Egypt 2016: A Statistical Digest", 7 per cent of children aged from 5 to 17 years were involved in child labour in 2014. While noting the measures taken by the Government, the Committee must express its **concern** at the situation and number of working children in Egypt. ***The Committee therefore encourages the Government to continue strengthening its efforts to ensure the progressive elimination of child labour. It requests that the Government continue providing information on the measures taken and the results achieved in terms of the number of children who are effectively removed from child labour, in particular through the implementation of the NAP-WFCL, once adopted.***

*Article 6. Apprenticeship.* The Committee notes that the Government developed draft Labour Code, for which it requested ILO technical assistance. It notes that sections 26 and 58 of the draft Labour Code provide for a minimum age for admission to apprenticeship or training of 13 years. The Committee recalls that *Article 6* of the Convention provides that training or apprenticeship performed in undertakings shall only be permitted for children of at least 14 years of age, where such work is an integral part of: a course of education or training for which a school or training institution is primarily responsible; a programme of training mainly or entirely in an undertaking, which has been approved by the competent authority; or a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. **The Committee therefore requests that the Government take steps to ensure that sections 26 and 58 of the draft Labour Code are amended to raise the minimum age of admission to apprenticeship or training from 13 to 14 years of age, in accordance with Article 6 of the Convention.**

*Article 7. Determination of types of light work.* The Committee previously noted the provisions of section 64 of the Child Law permitting children between the ages of 12 to 14 years, by decree of the governor concerned, with the agreement of the Minister of Education, to perform seasonal work which is not prejudicial to their health or development and does not interrupt their education. The Committee noted, at the time, that the minimum age for employment or work was 14 years in Egypt, but that it has since been raised to 15 years, in accordance with *Article 2(2)* of the Convention.

The Committee observes that, regarding the conditions and situation of employment of children of different age groups, section 59 of the draft Labour Code refers to the provisions of the Child Law, which includes section 64 on light work. The Committee recalls that, in accordance with *Article 7(1)* of the Convention, light work is only permitted for persons from 13 to 15 years of age, given that Egypt has specified 15 years as the minimum age for admission to employment or work. **The Committee therefore requests that the Government take the necessary measures to ensure that section 64 of the Child Law is amended to raise the minimum age of admission to light work to 13 years, in accordance with Article 7(1) of the Convention.**

The Committee is raising another matter in a request addressed directly to the Government.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

*Articles 3(a), 6 and 7(1) of the Convention. Sale and trafficking of children, programmes of action and penalties.* The Committee previously noted that the Government adopted and implemented the National Plan of Action against Human Trafficking 2011–13 (NAP-HT), with the aim of preventing human trafficking, protecting and assisting the victims of trafficking, ensuring effective penalties for traffickers and promoting and facilitating national and international cooperation in order to meet these objectives. It noted that the National Coordinating Committee planned to continue its anti-trafficking activities within the framework of the second NAP-HT (2013–15), including the establishment of a unit to combat trafficking in children (TIC unit) within the National Council for Children and Motherhood (NCCM). The Committee also noted the various measures taken to train law enforcement officials on how to deal with victims and aimed at strengthening the capacity of police officers both as first responders as well as investigators of cases of trafficking in persons. The Committee noted, however, that the 2011 Research Project to Study Trafficking Patterns in Egyptian Society conducted by the National Centre for Social and Criminological Research (NCSCR study report) identified the most prevailing forms of trafficking in persons in Egypt as the trafficking of children for labour and sexual exploitation and the trafficking of street children for sexual exploitation and begging.

The Committee notes the Government's information in its report that it implemented the NAP-HT (2013–15) in collaboration with several bodies led by the National Coordinating Committee against Human Trafficking, the Ministry of the Interior, the Office of the Public Prosecutor, the Ministry of Justice, the Ministry of Social Solidarity, the Ministry of Health and Population, UN bodies, and the International Organization for Migration (IOM). It notes that a third NAP-HT for the years 2016–21 was adopted, which aims to maintain referral mechanisms, train law enforcement officials and combat the trafficking of street children.

However, while noting these measures, the Committee notes that the Government does not provide information on the number of investigations and prosecutions in cases of child trafficking for labour or sexual exploitation. **The Committee therefore requests the Government to take the necessary measures to ensure the thorough investigation and robust prosecution of perpetrators of child trafficking for labour or sexual exploitation, and to provide information on the penalties applied. It also requests the Government to continue providing information on the impact of the measures taken within the framework of the NAP-HT 2016–21.**

*Article 3(b). Use, procuring or offering of a child for prostitution.* The Committee previously noted that while the Government's report provided information on the penalties for persons who violate the right of a child to protection against commercial sexual exploitation pursuant to section 291 of the Penal Code (as amended), this section does not address the issue of the criminal liability of the child victim of this offence. It noted that section 94 of the 2008 Child Law provides that the age of criminal responsibility starts at 7 years. The Committee noted that although section 111 of the Child Law prohibits handing down criminal sentences amounting to the death sentence, life imprisonment or hard labour to children under 18 years of age, it provides that children over 15 years of age are liable to confinement in jail for not less than three months or to the measures stated in section 101. In this regard, it noted the Government's reference to section 101 of the Child Law, which states that a child under the age of 15 years who has committed a crime shall be subjected to the following sanctions: reprimand; being institutionalized; following a course of training and rehabilitation; carrying out

specific duties; judicial testing; performing work for the public interest which is not hazardous; and placement at one of the specialized hospitals or at social welfare institutions. Moreover, the Committee observed that the Committee on the Rights of the Child, in its concluding observations under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of July 2011, noted with particular concern that children over 15 years of age who enter prostitution on their own free will are held responsible under domestic legislation which criminalizes prostitution (CRC/C/OPSC/EGY/CO/1, paragraph 35).

The Committee notes the Government's indication that the protection of the rights of child victims and witnesses is ensured through the UN Guidelines on the Protection of Child Victims of Trafficking, which aim to provide remedies to child victims of crimes, and include the right of child victims to be treated as victims and not as criminals. However, the Committee notes that the Government reiterates that the provisions of the Child Law and of the Penal Code protect children, although these provisions have previously been deemed by the Committee to be insufficient to protect children who are used, procured or offered for the purpose of prostitution, as they allow for child victims of prostitution who are over 15 years of age to be held criminally responsible. The Committee reminds the Government that *Article 3(b)* of the Convention prohibits the procuring, offering or use of a child for prostitution, and that the child's consent does not preclude it from the prohibition (see General Survey on the fundamental Conventions, 2012, paragraphs 508–509). Therefore, children 15 to 18 years of age who enter prostitution "on their own free will" are still victims of commercial sexual exploitation. ***The Committee once again urges the Government to take the necessary measures to ensure that all child victims of prostitution who are under the age of 18 years are treated as victims rather than offenders. To this end, the Committee urges the Government to amend section 111 of the Child Law to ensure that children under 18 years of age who are victims of prostitution are not criminalized and/or imprisoned.***

*Clause (d). Identifying and reaching out to children at special risk. Children in street situations.* The Committee previously noted that there were some 1 million children in street situations in Egypt. It noted that, according to the NCSCR study report, at least 20 per cent of street children, most of whom were in the age group of 6–11 years, were victims of trafficking who were exploited by a third party for sexual purposes and for begging. Almost 40 per cent of street children did not commence formal education, while 60 per cent acquired minimum education through primary and preparatory education.

The Committee notes the Government's information pertaining to the measures taken to protect children under 18 years of age from trafficking, commercial sexual exploitation and begging, including the development and implementation of preventive activities aimed at reducing child trafficking in Egypt, the strengthening of the capacity of officials at the relevant Ministries, government bodies and NGOs that work with children exposed to danger, and the collaboration with civil society organizations and regional and international organizations. However, the Government does not provide information on the impact that the measures taken thus far have had on reducing the phenomenon of children in street situations in Egypt. ***Recalling that children in street situations are particularly exposed to the worst forms of child labour, the Committee encourages the Government to strengthen its efforts to ensure that children under 18 years of age living and working on the streets are protected from the worst forms of child labour, particularly trafficking, commercial sexual exploitation and begging. The Committee once again requests the Government to provide information on the impact of the measures taken, including the number of children who have been removed from the streets, provided with assistance and socially integrated into education or vocational training.***

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

## El Salvador

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2015.

*Articles 3(a) and 7(1) of Convention. Worst forms of child labour and penalties. Sale and trafficking of children for sexual exploitation.* The Committee previously noted that the trafficking of persons for sexual exploitation, particularly in forced prostitution rings involving children, is a serious problem in the country, with child victims being brought from Mexico, Guatemala and other countries in the region for prostitution. It also noted the concern expressed by the Committee on the Rights of the Child (CRC) with respect to the low level of prosecutions and convictions for trafficking-related crimes vis-à-vis the reported cases.

The Committee notes the Government's information concerning the investigations conducted and the convictions obtained in relation to the sale and trafficking of persons. However, as noted in its previous comment, this information does not provide statistics disaggregated according to whether the victims are adults or under 18 years of age; instead, the Government has provided a sample case of a criminal conviction for the trafficking of 11 victims between the ages of 11 and 16 years. Furthermore, the Committee notes that, without specifying any age, the Government indicates that public authorities identified 32 child victims of human trafficking in 2013. Finally, the Committee understands that the Committee on Family, Children, Adolescents, Elderly Persons and Persons with Disabilities has conducted a study and drafted a Special Law against Human Trafficking which will, among others, impose higher penalties for crimes committed against children.

The Committee also notes the adoption of a National Policy to Combat Trafficking in Persons in 2012. However, it further notes the 2014 concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and their Families (CMW/C/SLV/CO/2, paragraph 44), which expresses concern regarding the few sentences that have been passed for the offence of human trafficking. ***The Committee accordingly requests the Government to take the necessary measures to ensure***

*that thorough investigations and robust prosecutions of persons engaged in the sale and trafficking of children under 18 years of age for sexual exploitation are carried out. It also requests the Government to ensure that the draft Special Law against Human Trafficking is adopted. It further requests the Government to provide statistical information concerning the investigations and convictions obtained in relation to the sale and trafficking of children under the age of 18 years.*

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from such labour. Commercial sexual exploitation and trafficking of children for that purpose.* Further to its previous comments, the Committee notes the Government's reference to its national policy to combat human trafficking established under Decree No. 450 in 2012, which defines the term "human trafficking" to include trafficking for the purpose of sexual exploitation and sex tourism. The national plan provides for the protection, reintegration and restitution of victims of trafficking, and provides for programmes to be developed to protect victims and repatriate them as necessary. The Committee further notes the establishment of a National Council against Human Trafficking, which is mandated to further formulate, coordinate and evaluate the national policy as well as, among others, establish a national action plan implementing the principles set out in the national policy. The national policy and national action plan will be evaluated every three years to determine appropriate follow-up action, and public reports will be distributed to provide information concerning their accomplishments and application.

The Committee also notes the Government's information concerning measures taken to provide assistance to children and adolescents, including awareness raising in school centres for 919 boys and 854 girls on preventing trafficking for commercial sexual exploitation and the training of 290 officials on the rights of children in themes such as migration, trafficking and sexual exploitation. The Government also indicates that the Ministry of Justice and Public Security has implemented a plan to eradicate commercial sexual exploitation, human trafficking, child labour and the worst forms of child labour as part of the Institutional Strategy Plan (PNC).

The Committee takes due note of the Government's programmatic measures to combat human trafficking. However, it also notes that while the national plan and the mandate of the National Council target human trafficking generally, they do not contain specific provisions for child victims under the age of 18. It also notes that, according to the Government's statistical information, there were 14 cases of commercial sexual exploitation in January 2014, which the Committee notes is approximate to the 15 cases of such exploitation reported in January 2013, and may indicate that the Government's efforts to decrease the incidence of trafficking of children needs to be further strengthened. *Recalling that children below the age of 18 years are particularly vulnerable to trafficking for commercial sexual exploitation, the Committee strongly encourages the Government to take immediate and effective time-bound measures for the prevention, removal and rehabilitation of child victims, specifically, within the context of the national plan.*

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

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

## Eritrea

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee expressed its concern regarding the widespread child labour in Eritrea and the lack of data and comprehensive measures to ensure that children are protected from economic exploitation. The Committee also recalls the 2008 concluding observations of the Committee on the Rights of the Child (CRC) (CRC/C/ERI/CO/3, paragraphs 12 and 13), which recommended that the Government adopt a national plan of action for children and requested that the Government, with the support of the ILO, UNICEF and NGOs, develop a comprehensive assessment study and plan of action to prevent and combat child labour.

The Committee notes the Government's indication that it has collected data and information to formulate a national policy and that an upcoming Comprehensive National Child Policy document is expected to strengthen efforts to provide sustained services to children.

The Committee notes with *concern*, however, that despite these preliminary measures, the Government's report describes very little concrete action that has been undertaken to combat child labour, notwithstanding its prevalence in the country. The Committee notes, in this respect, the reports of the UN Human Rights Council (A/HRC/26/L.6 and A/HRC/26/45) in 2014, which continue to highlight child labour in the country, including military conscription, as well as work in hazardous activities such as harvesting and construction. The Committee further notes with *concern* the Government's indication in its fourth periodic report to the CRC (CRC/C/ERI/4, paragraph 22) that, because no case of child labour practices had been filed in Eritrean courts, the Government's efforts to control child labour must have been effective. *Observing with deep concern the continuing widespread child labour in Eritrea, including in hazardous activities, the Committee strongly urges the Government to intensify its efforts to implement concrete measures, such as by adopting a national plan of action to abolish child labour once and for all, in cooperation with the employers' and workers' organizations concerned, as well as strengthening the capacity of the labour inspection system. The Committee also strongly encourages the Government to seek technical assistance from the ILO.*

*Article 2(3) and (4). Age of completion of compulsory schooling and minimum age for admission to employment.* In previous comments, the Committee noted the Government's indication that education is compulsory for eight years (five years of elementary school and three years of middle school), meaning that compulsory education would be completed at 14 years of age. Nevertheless, the Committee noted its concern at the low school enrolment rates and the significant number of children who leave school prior to completing primary education.

The Committee notes the measures described in the Government's report to provide free education to all school children up to the middle school level as well as its policies, in particular the Nomadic Education Policy, to make education inclusive to all children. The Government further indicates that it endeavours to expand secondary school education and bring those schools closer to rural areas. The Committee also notes the 2013–16 UNICEF Country Programme Document for Eritrea

(E/ICEF/2013/P/L.1), which highlights certain measures that the Government has undertaken to improve basic education, including the free elementary education and nomadic education projects.

While taking due note of the Government's efforts, the Committee also notes that, according to the statistical information contained in the draft proposal within the Strategic Partnership Cooperation Framework (SPCF) 2013–16 between the Government and the United Nations system, the net enrolment rate declined from 52.5 per cent in 2005 to 49.6 per cent in 2010, with disparities by location and gender. The Committee further notes the information contained in the Government's fourth periodic report to the CRC (CRC/C/ER/4, paragraph 301 and table 28), according to which student enrolment at the elementary school level decreased by 9 per cent and female enrolment decreased by 8 per cent in 2009–10. ***Noting that increasing access to quality basic education is included among the priorities of the SPCF 2013–16, as well as the Eritrea Country Programme with UNICEF, the Committee requests the Government to continue to cooperate with the UN bodies to improve the functioning of, and access to, the education system so as to increase school enrolment rates and reduce school drop-out rates for children at least up to the age of completion of compulsory education, particularly with regard to girl children.***

*Article 3(2). Determination of the types of hazardous work.* The Committee recalls that the Government has been referring to the upcoming adoption of a list of hazardous activities prohibited to young employees under section 69(1) of the Labour Proclamation since 2007. The Committee notes that the Government again repeats this indication but also states that the provisions specified under the current section 69 of the Labour Proclamation are sufficient because they include the list of hazardous activities. The Committee notes, however, that section 69 merely authorizes the minister, by regulation, to issue such a list. Therefore, in lieu of a ministerial regulation, by its own terms, the list contained in section 69 remains hypothetical. ***The Committee accordingly urges the Government, without delay, to finalize the ministerial regulation issuing the list of hazardous activities prohibited to persons under the age of 18.***

*Article 9(3). Keeping of registers by employers.* The Committee previously noted the Government's indication that the requirement for employers to maintain a register for persons employed who are under 18 years would be addressed in an upcoming regulation. The Committee notes, however, the Government's latest indication that the Ministry of Labour and Human Welfare is still undertaking studies to develop this regulation. ***Noting that the Government has been repeating its aim to adopt implementing legislation since 2007, the Committee urges the Government, without further delay, to take the necessary measures to adopt the regulation concerning the registers kept by employers and to transmit a copy once finalized.***

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

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

## Fiji

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

*Article 7(2). Effective and time-bound measures. Clause (e). Taking account of the special situation of girls. Child victims of commercial sexual exploitation.* In its previous comments, the Committee took note of the serious problem of child prostitution, particularly in sex tourism, in the country and noted the concern expressed by the UN Committee on the Elimination of Discrimination against Women about the exploitation of underage girls in commercial sex work. The Committee took note of the Government's reference to a task force subcommittee of the National Coordinating Committee on Children (NCCC), which is comprised of "Homes of Hope", the ILO and "Empower Traffic", and which is working with the Department of Women and Social Welfare (DOW) in managing and intervening in children's rights cases. The Government stated that the Police Department intervenes if the DOW receives reports of child victims of prostitution or sexual abuse. The Committee further noted the Government's commitment to ensure that children who are removed from such circumstances are placed under the care of the State and undergo rehabilitation programmes before they are reintegrated into educational or vocational programmes. It also noted the Government's endeavours to continue to strengthen the network between government ministries, particularly the Ministry of Labour and the Ministry of Education, along with non-governmental organizations and faith-based organizations, to ensure the care and protection of children. The Committee took due note of the Government's efforts to combat the commercial sexual exploitation of children. However, it noted the information contained in the report "Child Labour in Fiji – A survey of working children in commercial sexual exploitation, on the streets, in rural agricultural communities, in informal and squatter settlements and in schools" (Child Labour in Fiji report), produced by the ILO Country Office for South Pacific Island Countries and ILO-IPEC, according to which the commercial sexual exploitation of children and child sex tourism continue to occur. The Committee expressed its concern regarding the continuation of child commercial sexual exploitation, including child sex tourism, and requested the Government to take effective and time-bound measures and to provide information in this regard.

The Committee notes the absence of information in this regard in the Government's report. It notes however that, according to its 2014 concluding observations, the Committee on the Rights of the Child notes with deepest concern that sexual exploitation and abuse of children is prevalent in Fiji, including through organized child prostitution networks and brothels (CRC/C/FJI/CO/2-4, paragraph 32). The Committee on the Rights of the Child is furthermore gravely concerned about Fiji being a source country for children subjected to sex trafficking and forced labour, with child trafficking victims being exploited in brothels, local hotels, private homes and other rural and urban locations (paragraph 69). ***The Committee once again urges the Government to take effective and time-bound measures to remove children from the worst forms of child labour, taking into account the special situation of girls. The Committee also once again requests the Government to provide concrete information on the intervention strategies and rehabilitation programmes aimed at providing direct assistance to child victims of commercial sexual exploitation, and on the number of these children who have been effectively rehabilitated and socially integrated.***

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

## Ghana

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3(d) of the Convention. Hazardous work in cocoa farming.* The Committee previously noted the Government's activities within the framework of the National Programme for the Elimination of Worst Forms of Child Labour in the Cocoa Industry (NPECLC) and its action plan for 2010–11. It further welcomed the development of the manual for agents of change in communities in Ghana, which was developed with ILO–IPEC assistance in 2014 with a view to, among others, eliminate child labour in hazardous work in Ghana's cocoa farms. It noted, however, the statistical data contained in the manual, according to which most children aged 5–17 years engaged in labour in the country were found in the agricultural sector, with 23.3 per cent of the children covered (1,846,126) engaged in at least one hazardous activity with 10 per cent in cocoa-specific hazardous activities. The Committee noted with concern the significant number of children below 18 years of age engaged in hazardous conditions of work in the agricultural sector, including in the cocoa industry, and requested the Government to strengthen its efforts to eliminate this worst form of child labour.

The Committee notes with *regret* the absence of information in the Government's report on this issue. ***The Committee therefore urges the Government to undertake the necessary measures to eliminate the hazardous work of children under 18 years of age in cocoa farming, and requests the Government to provide information on any initiatives taken in this regard and the results achieved.***

*Article 4(3). Revision of the list of hazardous types of work.* The Committee previously noted the Government's indication that it envisaged to review and update as necessary section 91 of the Children's Act, including the list of types of hazardous work so as to be in compliance with the Convention. The Committee noted that a new list of hazardous work had been finalized in the cocoa sector within the framework of the NPECLC. The Committee also noted that the National Plan of Action (NPA) for the Elimination of the Worst Forms of Child Labour in Ghana (2009–15) identified the need to expand the list of hazardous activities under the Children's Act. It further noted that the Economic Community of West African States (ECOWAS) "Peer Review of Child Labour Elimination Activities in Ghana", which was carried out in April 2014 with ILO technical assistance, described the Hazardous Child Labour Activity Framework that was elaborated in 2012 and was to be disseminated in 2014. The Committee further noted that, according to the Government's first report submitted under Convention No. 138, the National Steering Committee of the Child Labour Unit (CLU) had validated a list of hazardous types of work under the Hazardous Child Labour Activity Framework, entitled the "Ghana Hazardous Child Labour List" (GHAHCL), although the Government indicates that it had not yet become national law.

The Committee notes with *regret* the absence of information in this regard. ***Noting that the list of hazardous types of work under the Hazardous Child Labour Activity Framework has been elaborated and validated since 2012, the Committee urges the Government to take the necessary measures to ensure that it is adopted in the near future. The Committee also requests the Government to provide information on any progress made in this regard.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* 1. *Trafficking.* The Committee previously noted that ILO–IPEC was supporting a national programme which focused on, among others, the worst forms of child labour in traditional fishing. The Committee also noted the Analytical Study on Child Labour in Lake Volta Fishing in Ghana, which was carried out in 2013 with ILO–IPEC assistance, which found that working children are engaged in hazardous fishing activities and are confronted with poor working conditions. Among the children engaged in fishing activities, 11 per cent were aged 5–9 years and 20 per cent were aged 10–14 years. Furthermore, according to the study, 47 per cent of children engaged in fishing in Lake Volta were victims of trafficking, 3 per cent were involved in bondage, 45 per cent were engaged in forced labour and 3 per cent were engaged in sexual slavery. The Committee expressed its deep concern at the prevalence of children who have been trafficked or sold into fishing activities, or are otherwise engaged in hazardous fishing activities in the Lake Volta region.

The Committee notes with *regret* the absence of information in this regard in the Government's report. However, the Committee notes from the Government's replies to the list of issues in relation to the initial report of Ghana under the International Covenant on Civil and Political Rights of 13 June 2016, that the Government is implementing the Child Protection Compact Agreement aimed at combating child trafficking, child slavery, and child labour in the Greater Accra, Volta and Central Regions. Currently, standard operating procedures and the database of trafficking in persons are being developed to identify victims of trafficking and follow up on various assistance interventions (CCPR/C/GHA/Q/1/Add.1, paragraph 74). The Committee also notes that, there are two government-owned shelters in Osu and Madina in Accra, which will be soon under renovation (paragraph 75). The Committee further notes that, the General Agriculture Workers Union (GAWU) project is being implemented in Kpondo Torkor to eliminate trafficking and child labour in the fishing sector (Volta Lake). The project puts a focus on the communities to protect children and send them to school. Moreover, a speedboat was launched in April 2015 to assist volunteers to monitor activities, arrest perpetrators and rescue children on the lake (paragraph 76). ***While taking due note of the measures undertaken by the Government, the Committee once again urges the Government to strengthen its efforts to ensure that these children are removed from the worst forms of***

*child labour and provided with appropriate support services for their rehabilitation and social integration. It also once again requests the Government to provide information on the results achieved in this regard, including the number of child victims of trafficking who have been removed and rehabilitated, as a result of the measures taken.*

2. *Trokosi system.* The Committee previously noted that, despite the Government's efforts to withdraw children from *trokosi* (a ritual in which teenage girls are pledged to a period of service at a local shrine to atone for another family member's sins), the situation remained prevalent in the country. The Committee also noted that, under the NPA for the Elimination of the Worst Forms of Child Labour (2009–15), the Government aims to implement programmes to facilitate change in attitudes with regard to traditional practices towards children's rights.

The Committee notes with *regret* that the Government's report provides no new information on its programmatic measures to prevent and remove children from the *trokosi* system. It also notes that the Human Rights Committee is concerned about the persistence of certain harmful practices, including the *trokosi* system, notwithstanding their prohibition by law, in its concluding observations of 9 August 2016 (CCPR/C/GHA/CO/1, paragraph 17). The Committee notes with *deep concern* the prevalence of the *trokosi* practice affecting children in the country. *The Committee therefore strongly urges the Government to take immediate and effective measures to prevent the engagement of children into trokosi ritual servitude and to put an end to this traditional practice as a matter of urgency. It once again requests the Government to indicate the measures taken in this regard and the results achieved, taking account of the special situation of girls. It once again requests the Government to provide information on the number of children under 18 years of age who are affected by the trokosi system in the country, and on how many are removed from this system and rehabilitated. To the extent possible, this information should be disaggregated by age and by gender.*

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

## Guinea

### Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

*Article 1 of the Convention. National policy and application of the Convention in practice.* Further to its previous comments, the Committee notes the measures to which the Government refers in its report, including the development and adoption of a national social protection policy, the implementation of a children's Parliament and the creation, with the National Employment Directorate, of a division responsible for combating child labour.

The Committee nevertheless notes the Government's indication that no national policy to abolish child labour has yet been developed. Moreover, it notes with *deep concern* that, according to the estimates contained in the report "The twin challenges of child labour and educational marginalisation in the ECOWAS region", prepared as part of the Understanding Children's Work Programme (2014 UCW Report), 35.2 per cent of children between the ages of 5 and 14 years work, or 1,010,729 children in absolute terms, of whom 33 per cent are aged 5 to 11 years and 41.3 per cent are aged 12 to 14 years (the latter figure excludes children engaged in light work) (page 16, table 4). The 2014 UCW Report also indicates that in Guinea, 76.2 per cent of working children aged 10 to 14 years are in the agriculture sector, which is one of the most dangerous sectors and in which they face serious hazards, including the operation of dangerous equipment, pesticide exposure, heavy loads and excessive physical exertion (page 23, paragraph 29 and table 10). *Observing once again that a significant number of children work under the minimum age for admission to employment, of 16 years, including in hazardous conditions, the Committee urges the Government to take the necessary steps to ensure the adoption of a national policy to abolish child labour and to provide information on the progress achieved in this regard. It also requests that the Government provide information on the impact of the other measures taken by the Government to abolish child labour, in particular on the division responsible for combating child labour.*

*Article 2(1). Scope of application and labour inspection.* The Committee previously noted that 6 per cent of economically active children aged 5 to 17 years in Guinea, or approximately 91,940 children, were self-employed workers. The Committee noted the Government's indication that the Children's Code (Act No. L/2008/011/AN), adopted on 19 August 2008, protects all children, including those who are not bound by an employment relationship. The Committee however observed that section 412 provides that it is prohibited for an employer to allow a child under the age of 16 years to perform work without having first obtained the consent of the person exercising parental authority. The Committee therefore noted that the Children's Code only appears to impose a minimum age for admission to employment on employers, without addressing situations in which children work on their own account. The Committee reminded the Government that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether or not it is performed on the basis of an employment relationship and whether or not it is remunerated. It requested that the Government provide information on the manner in which children working on their own account benefit from the protection afforded by the Convention.

The Committee notes the Government's indication that, with the help of partners, the resources at the disposal of the labour inspectorate will be strengthened to ensure the effective monitoring of the situation of children working on their own account. In this regard, the Committee observes that, in its report under the Labour Inspection Convention, 1947 (No. 81), the Government refers to certain measures taken to provide the labour inspection services with the necessary human, material and financial resources that are crucial to ensuring their normal operation, such as the provision of a

number of young officials. The Government also indicates that it has established a training programme for new recently recruited labour inspectors and that one of the implementation phases of this programme was held in March 2017 with ILO support. The Government has also developed and adopted, with ILO support, methodological guidelines for labour inspection.

Referring to the General Survey of 2012 on the fundamental Conventions (paragraph 407), the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors. ***The Committee therefore encourages the Government to continue to strengthen the capacities of the labour inspectorate so that it can monitor children working on their own account, and to provide information on the impact of the measures taken to detect such children. It also requests that the Government provide information on the manner in which the inspections conducted by labour inspectors are carried out in practice in order to monitor child labour, including information on the number of violations reported and extracts from the reports of labour inspectors.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted the Government's indication that compulsory schooling in Guinea only covers primary education, that is up to the age of 13 years. However, the Committee observed that the minimum age for admission to work specified by Guinea when ratifying the Convention is 16 years. The Committee nevertheless noted that, despite the significant progress achieved in relation to school enrolment and equity in education, a considerable number of children who have not yet reached the minimum age for admission to employment did not attend or had ceased to attend school and that, in parallel, the proportion of economically active children rises with age.

The Committee notes the information provided by the Government in which it reiterates that the age of completion of compulsory schooling is 13 years, but that by extending basic education to lower secondary education (year ten) and thus to all children aged 6 to 16 years, the Government wishes to eliminate child labour through compulsory schooling. The Committee nevertheless notes that, although basic education may now include lower secondary education, the age of completion of compulsory schooling remains 13 years of age.

In this regard, the Committee notes with ***concern*** that, according to the 2014 UCW Report, the attendance gap between working and non-working children is particularly pronounced in Guinea (22 percentage points) (paragraph 45). Referring to the General Survey of 2012 on the fundamental Conventions (paragraph 371), 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. ***Recalling that compulsory schooling is one of the most effective means of combating child labour, the Committee strongly encourages the Government to take the necessary measures to make education compulsory up to the minimum age for admission to employment, that is, 16 years. It also once again requests that the Government provide a copy of the national legislation on education.***

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

## Guyana

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1998)***

*Article 1 of the Convention. National policy for the elimination of child labour. National action plan.* The Committee previously noted that the Government reiterated its commitment to adopting a national policy designed to ensure the effective abolition of child labour in the country since 2001. The Committee also noted that, although the Government undertook a number of policy measures aimed at tackling child labour through education programmes, in particular under the ILO-IPEC project entitled "Tackle child labour through education" (TACKLE project), it continued to indicate that a National Plan of Action for Children (NPAC) was under development. The Committee notes that the Government's report does not contain any new information in this regard. ***The Committee therefore once again urges the Government to strengthen its efforts to finalize the NPAC and to provide a copy of it in the very near future. Furthermore, noting the Government's previous indication that the National Steering Committee on Child Labour – which had initiated and drafted a national action plan to eliminate and prevent child labour – is no longer functioning, the Committee requests the Government to provide updated information on the measures taken or envisaged to finalize this process.***

*Article 3(3). Authorization to work in hazardous employment from the age of 16 years.* In its previous comments, the Committee observed that section 6(b) of Act No. 9 of 1999 on the employment of young persons and children (hereafter Act No. 9 of 1999) grants the Minister discretion to authorize, through regulations, the engagement of young persons between the ages of 16 and 18 years in hazardous work. The Committee also observed that, although sections 41 and 46 of the Occupational Safety and Health Act, 1997 (OSHA), aim to prevent young persons from undertaking employment activities that could impede their physical health or emotional development, the Government had identified difficulties in monitoring and enforcing those provisions. The Government accordingly indicated that Act No. 9 of 1999 would be amended to ensure that the protections afforded under the Act are extended to all young persons under the age of 18 years.

The Committee noted that the Government's previous report did not contain any new information and merely stated that no ministerial regulations had been issued and that the OSHA provisions ensure that young persons between 16 and

18 years who are employed in hazardous work receive adequate specific vocational training. However, the Committee noted the inadequate measures for monitoring and enforcing the OSHA provisions and that, notwithstanding the significant number of children involved in hazardous work, only three such cases had been reported to the Government's reporting mechanism.

The Committee notes with *deep concern* that the Government's report provides no new information concerning the process of amending Act No. 9 of 1999, despite its repeated commitment over the years to do so. It once again draws the Government's attention to paragraph 381 of the 2012 General Survey on the fundamental Conventions, which stresses that compliance with *Article 3(3)* of the Convention requires that any hazardous work for persons from the ages of 16–18 years be authorized only upon the conditions that the health, safety and morals of the young persons concerned are fully protected and that they, in practice, receive adequate specific vocational training. *The Committee accordingly once again urges the Government to take measures to amend Act No. 9 of 1999 in the near future so as to ensure conformity with Article 3(3) of the Convention by providing adequate protection to young persons between the ages of 16 and 18, and to supply a copy of the amendments once they have been finalized. Moreover, recalling the Government's indication that efforts are under way with the tripartite partners to include additional areas of work on the hazardous work list, the Committee requests the Government to supply a copy of this amended list once it becomes available.*

*Article 9(3). Keeping of registers.* Following its previous comments, the Committee notes the Government's indication that section 86(a) of the OSHA, Chapter 99:10, provides for the obligation of employers of industrial establishments to record, and keep in a register, the prescribed particulars of all employees under the age of 18 years. *The Committee requests that the Government indicate which provisions establish the same obligation for the employment of young persons under 18 years of age in non-industrial undertakings.*

*Labour inspection and practical application of the Convention.* The Committee previously noted the results of the Multiple Cluster Indicator Survey identifying a high percentage of working children in the country. The Committee also noted the indication of the International Trade Union Confederation (ITUC) that labour inspectors fail to effectively enforce the applicable legislation and that child labour was particularly prevalent in the informal economy.

In response, the Government simply indicated that its labour inspectors routinely conduct workplace inspections and that there had been no evidence of child labour. Nevertheless, the Committee noted a three-year programme which aimed to, among others, strengthen the capacity of national and local authorities in the formulation, implementation and enforcement of the legal framework on child labour and which would include a focus on child labour in the informal economy. *Noting the absence of information provided in this respect, the Committee once again requests that the Government strengthen its efforts to combat child labour, including in the informal economy, and to provide information on the results achieved in this regard. Furthermore, recalling that the Government is establishing a baseline survey on child labour, the Committee again requests the Government to provide information concerning the results of the survey.*

## Haiti

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2007)**

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 30 August 2017 and requests the Government to provide its comments in this respect.

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

The Committee notes that the Law No. CL/2014-0010 of 2 June 2014 on the fight against trafficking in persons has been adopted.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted that, according to the report of the United Nations Special Rapporteur on contemporary forms of slavery, a new trend has been observed with regard to the employment of children as domestic workers (designated by the Creole term *restavèks*). This consists of the emergence of persons who recruit children from rural areas to work as domestic servants in urban families and outside the home in markets. The Special Rapporteur noted that this new trend has caused many observers to describe the phenomenon as trafficking, since parents are now handing their children over to strangers, whereas previously they entrusted the children to relatives. The Committee noted the observations of the International Trade Union Confederation (ITUC) that smuggling and trafficking in children was continuing, particularly towards the Dominican Republic. The ITUC has gathered serious eyewitness reports of sexual abuse and violence, even including murder, against young women and young girls who have been trafficked, particularly by Dominican military personnel and expressed concern at the fact that there does not appear to be a law under which those responsible for trafficking in persons can be brought to justice and that a draft legislation was to be adopted by the Parliament.

The Committee notes with *interest* the adoption of Law No. CL/2014-0010 of 2 June 2014 on the fight against trafficking in persons. The Law provides that trafficking in children, meaning the procuring, enlistment, transfer, transportation, accommodation or reception of a child for the purposes of exploitation constitutes an aggravating circumstance giving rise to life imprisonment (sections 11 and 21). The Committee notes, however, that, according to its 2014 concluding observations (CCPR/C/HTI/CO/1, paragraph 14), the Human Rights Committee remains concerned about the continuing exploitation of *restavèks* children and the lack of statistics on, and results from, the investigations into the perpetrators of trafficking. Similarly, the Committee notes that, according to the 2015 report of the independent expert on the human rights situation in Haiti (A/HRC/28/82, paragraph 65 with reference to A/HRC/25/71, paragraph 56), the *restavèks* phenomenon is the consequence of the

weakness of the rule of law and those children are systematically unpaid, subjected to forced labour, and exposed to physical and/or verbal violence. Their number was estimated at 225,000 by UNICEF in 2012. **The Committee, therefore, urges the Government to take the necessary measures to ensure the effective implementation of Law No. CL/2014-0010, in particular in ensuring that in-depth investigations and effective prosecutions are completed with regard to perpetrators of trafficking of children under 18 years of age. The Committee also requests the Government to provide statistical data on the application of the law in practice, including the number and nature of the violations reported, investigations, prosecutions, convictions and the penal sanctions applied.**

*Clauses (a) and (d) Forced or compulsory labour and hazardous work. Child domestic labour.* In its previous comments, the Committee noted the situation of hundreds of thousands of *restavèk* children who are often exploited under conditions that qualify as forced labour. It noted that in practice many of these children, some of whom are 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 victims of physical, psychological and sexual abuse. In addition, very few of them attend school. The Committee also noted the repeal of Chapter IX of Title V of the Labour Code, relating to children in service, by the Act of 2003 for the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhumane treatment of children (the Act of 2003). It noted that the prohibition set out in section 2(1) of the Act of 2003 covers the exploitation of children, including servitude, forced or compulsory labour, forced services and 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, without however establishing penalties for violations of its provisions. The Committee noted that the repealed provisions included section 341 of the Labour Code, under which a child from the age of 12 years could be entrusted to a family to be engaged in domestic work. The Committee nevertheless observed that section 3 of the Act of 2003 provides that a child may be entrusted to a host family in the context of a relationship of assistance and solidarity.

The Committee noted previously that the Special Rapporteur, in her report, expressed deep concern at the vagueness of the concept of assistance and solidarity and considered that the provisions of the Act of 2003 allow the practice of *restavèk* to be perpetuated. According to the report of the Special Rapporteur, the number of children working as *restavèk* is between 150,000 and 500,000 (paragraph 17), which represents about one in ten children in Haiti (paragraph 23). Following interviews with *restavèk* children, the Special Rapporteur ascertained that all of them were given heavy workloads by their host families, which were often incompatible with their full physical and mental development (paragraph 25). Moreover, the Special Rapporteur was told that these children are often ill-treated and subjected to physical, psychological and sexual abuse (paragraph 35). Representatives of the Government and of civil society pointed out that cases of children being beaten and burnt were routinely reported (paragraph 37). The Committee noted that, in view of these findings, the Special Rapporteur described the *restavèk* system as a contemporary form of slavery.

The Committee notes the ITUC's allegations that the earthquake of 12 January 2010 resulted in an abrupt deterioration in the living conditions of the population of Haiti and increasingly precarious working conditions. According to the ITUC, an increasing number of children are engaged as *restavèk* and it is highly probable that their conditions have deteriorated further. Many of the eyewitness accounts gathered by the ITUC refer to extremely arduous working conditions, and exploitation is often combined with degrading working conditions, very long hours of work, the absence of leave and sexual exploitation and situations of extreme violence.

The Committee notes the Government's recognition that the engagement of *restavèk* children in domestic work is similar to forced labour. It once again expresses **deep concern** at the exploitation of children under 18 years of age in domestic work performed under conditions similar to slavery and in hazardous conditions. It once again reminds the Government that, under the terms of *Article 3(a) and (d)* of the Convention, work or employment by children under 18 years of age under conditions that are similar to slavery or that are hazardous comprise the worst forms of child labour and, under the terms of *Article 1*, are to be eliminated as a matter of urgency. **The Committee requests the Government to take immediate and effective measures to ensure in law and practice that children under 18 years of age are not engaged as domestic workers under conditions similar to slavery or in hazardous conditions, taking into account the special situation of girls. In this respect, it urges the Government to take the necessary measures to amend the provisions of the national legislation, and particularly section 3 of the Act of 2003, which allow the continuation of the practice of *restavèk*. The Committee also requests the Government to take the necessary measures to ensure that in-depth investigations are conducted and effective prosecutions of persons subjecting children under 18 years of age to forced domestic work or to hazardous domestic labour, and that sufficiently effective and dissuasive penalties are imposed in practice.**

*Article 5. Monitoring mechanisms. Child protection brigade.* The Committee notes the ITUC's allegation that a child protection brigade (BPM) exists in Haiti protecting the borders. However, the ITUC indicates that the corruption of officials on both sides of the border has not been eradicated and that the routes for trafficking in persons avoid the four official border posts and pass through remote locations where more serious situations of abuse against the life and integrity of migrants probably occur.

The Committee notes the Government's indication that the BPM is a specialized police unit which arrests traffickers, who are then brought to justice. However, the Government adds that, during judicial inquiries, procedural issues are often used by those charged to escape justice. The Committee is bound to express **concern** at the weakness of the monitoring mechanisms in preventing the phenomenon of trafficking in children for exploitation. **The Committee requests the Government to take the necessary measures to strengthen the capacity of the BPM to monitor and combat trafficking in children under 18 years of age and to bring those guilty to justice. It requests the Government to provide information on the measures adopted in this respect and the results achieved.**

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Sale and trafficking.* In its previous comments, the Committee noted that, according to the United Nations Office on Drugs and Crime report of February 2009: *Global Report on Trafficking in Persons*, no system exists to provide the victims of trafficking with care or assistance, nor are there any reception centres for victims of trafficking. It also noted that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 26), expressed concern at the lack of reception centres for women and girls who are victims of trafficking.

The Committee notes the ITUC's allegations that there is a public system of care and assistance for persons who are victims of trafficking. The reports gathered by the ITUC indicate that victims are referred to the police forces, which relay them to the Social Welfare and Research Institute (IBESR), which then places them in reception centres.

The Committee notes the Government's indication that a pilot social protection programme was envisaged, but that the earthquake of 12 January 2010 undermined the implementation of the programme. **The Committee urges the Government to take effective measures for the provision of the necessary and appropriate direct assistance for the removal of child victims of sale and trafficking and for their rehabilitation and social integration. In this respect, it requests the Government to provide information on the number of children under 18 years of age who are victims of trafficking and who have been placed in reception centres through the police forces and the IBESR.**

*Clause (d). Identifying and reaching out to children at special risk. Restavèk children.* In its previous comments, the Committee noted the existence of programmes for the reintegration of *restavèk* children established by the IBESR in cooperation with various international and non-governmental organizations. It noted that these programmes focus on reintegration in the family setting with a view to promoting the social and psychological development of the children concerned. However, it noted that the Committee on the Rights of the Child, in its concluding observations, had expressed deep concern at the situation of *restavèk* children placed in domestic service and recommended that the Government take urgent steps to ensure that *restavèk* children are provided with physical and psychological rehabilitation and social reintegration services (CRC/C/15/Add.202, 18 March 2003, paragraphs 56 and 57).

The Committee notes the ITUC's indications that it has been informed of initiatives for the reintegration of *restavèk* children implemented, among others, with the support of UNICEF and the International Organization for Migration (IOM). While welcoming these initiatives, the ITUC calls on the Government to ensure that these programmes continue to be combined with measures intended to improve the living conditions of the families of origin of the children.

The Committee notes the Government's indication that cases of the ill-treatment of children in domestic service are taken up by the IBESR, which is responsible for placing them in families for the purposes of their physical and psychological rehabilitation. However, the Government recognizes that there are still only a few such cases. **The Committee urges the Government to intensify its efforts to ensure that *restavèk* children benefit from physical and psychological rehabilitation and social integration services in the framework of programmes for the reintegration of *restavèk* children or through the IBESR.**

*Article 8. International cooperation. Sale and trafficking of children.* The Committee previously noted that the Ministry of Social Affairs and Labour, in cooperation with the Ministry of Foreign Affairs, was studying the problem of the exploitation of persons in sugar cane plantations in the Dominican Republic and of children reduced to begging in that country, and intends to engage in bilateral negotiations with a view to resolving the situation. It also noted that the CEDAW, in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 27), encourages the Government "to conduct research on the root causes of trafficking and to enhance bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic, to prevent trafficking and bring perpetrators to justice".

The Committee notes once again that the Government's report does not contain information on this subject. **It once again requests the Government to provide information in its next report on the progress made in the negotiations for the adoption of a bilateral agreement with the Dominican Republic.**

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

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

## Kyrgyzstan

### Minimum Age Convention, 1973 (No. 138) (ratification: 1992)

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Article 1 of the Convention. National policy and application of the Convention in practice.* The Committee previously noted that according to the 2007 national child labour survey (CLS) estimates, 672,000 of the 1,467,000 children aged 5–17 years in Kyrgyzstan (45.8 per cent) were economically active. The prevalence of employment among children increases with age: from 32.7 per cent of children aged 5–11 years; to 55 per cent of children aged 12–14 years; and 62.3 per cent of children aged 15–17 years.

The Committee notes that, in the framework of the ILO–IPEC project entitled "Combating Child Labour in Central Asia – Commitment becomes Action" (PROACT CAR Phase III), which aims to contribute to the prevention and elimination of the worst forms of child labour in Kazakhstan, Kyrgyzstan and Tajikistan, a wide array of actions have been undertaken to combat child labour, including its worst forms, in Kyrgyzstan. These include the adoption of the Code on Children of 31 May 2012, section 14 of which bans the use of child labour; a mapping, in 2012, of the legislation and policies on child labour and youth employment in Kyrgyzstan, which aims to identify the link between the elimination of child labour and the promotion of youth employment; the finalization of the Guidelines on Child Labour Monitoring in Kyrgyzstan; as well as a number of action programmes to establish child labour free zones and to establish child labour monitoring systems in various regions of the country. **The Committee strongly encourages the Government to pursue its efforts towards the progressive elimination of child labour through the ILO–IPEC PROACT CAR Phase III project and to provide information on the results achieved, particularly with respect to reducing the number of children working under the minimum age (16 years) and in hazardous work.**

*Article 2(1). Scope of application and labour inspection.* The Committee previously noted the Government's information that the Attorney-General of the Republic of Kyrgyzstan and the state labour inspectorate are responsible for the application and enforcement of labour legislation. It noted that the minimum age provisions applied to work carried out at home or in a business, domestic work, hired work, commercial agriculture, and family and subsistence agriculture. However, it noted the statement in a 2006 report of the International Confederation of Free Trade Unions (now the International Trade Union Confederation) that many children were working in family enterprises, domestic services, agriculture (tobacco, cotton, rice), cattle breeding, gasoline sales, car washing, shoe cleaning, selling products at the roadsides, and retail sales of tobacco and alcohol. The Committee also noted the Government's information that child labour was widespread in farms, private enterprises, individual business activities and self-employment.

The Committee notes the Government's information that the Labour Code, by virtue of its section 18, applies to the parties involved in contractual labour relations, that is the worker and the employer. It notes, however, that according to the CLS, the

overwhelming majority of child labourers (96 per cent) work in agriculture or home production, and in terms of work status, the overwhelming majority (95 per cent) are unpaid family workers. *The Committee requests the Government to take immediate measures to ensure that self-employed children, children in the informal economy and children working on family farms benefit from the protection laid down in the Convention. In this regard, it once again requests the Government to indicate any measures adopted or envisaged to strengthen the labour inspection, particularly in the abovementioned sectors. Lastly, the Committee once again requests the Government to provide information on the manner in which the state labour inspectorate and the Attorney-General enforce specific legislative provisions giving effect to the Convention.*

*Article 7. Light work.* The Committee previously noted that, according to section 18 of the Labour Code, pupils who have reached the age of 14 years may conclude an employment contract with the written consent of their parents, guardians or trustees to perform light work outside school hours, provided that it does not harm their health and does not interfere with their education. The Committee noted that according to sections 91 and 95 of the Labour Code, the working hours for workers aged 14–16 years shall not exceed 24 hours per week, and daily working hours shall not exceed five hours. The Committee therefore requested the Government to indicate the manner in which the attendance at school of children working five hours per day was ensured. It also requested the Government to indicate the activities in which light work by children aged 14–16 years may be permitted.

The Committee notes the information in the 2007 CLS according to which, despite the high employment ratio among children, school attendance is also very high, with 98.9 per cent of children aged 7–14 years and 89.2 per cent of children aged 15–17 years attending school. However, children in employment are also found to have slightly lower school-attendance rates than non-working children. Among non-working children aged 7–17 years, the school attendance rate is estimated to be 97.4 per cent, compared to 94.5 per cent among working children aged 7–17 years, with the difference mainly resulting from the lower school attendance of older working children. *The Committee requests the Government to take immediate measures to ensure that children under 14 years of age are not engaged in work or employment. With regard to children over 14 years of age engaged in light work, the Committee requests the Government to take the necessary measures to ensure that their school attendance is not prejudiced. The Committee also once again requests the Government to indicate the activities in which light work by children aged 14–16 years may be permitted. If these activities are not yet determined by the law, the Committee urges the Government to take the necessary measures to adopt a list of types of light work activities which are permitted to children over 14 years of age.*

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

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

## Lao People's Democratic Republic

### Minimum Age Convention, 1973 (No. 138) (ratification: 2005)

*Article 3(1) and (2) of the Convention. Minimum age for admission to, and determination of, hazardous work.* The Committee notes that, pursuant to Article 102 of the Labour Law Amendment Act of 2013, the list of hazardous work prohibited to children under 18 years of age is specified separately. The Committee also notes with *satisfaction* that the Ministerial Decree on the List of Hazardous Work for Young Persons was adopted in 2016. Section 3 contains a comprehensive list of types of hazardous work prohibited to young persons under 18 years of age, such as work handling with chemical and poisonous substances, work which carries the risk of infection with communicable diseases, work with sharp tools, work in the tobacco industry, and so on. The Committee also notes that, according to section 6, individuals or legal entities who violate this decree shall be responsible in both civil and criminal procedures depending on the severity of the violation. *The Committee requests the Government to provide information on the implementation of the Ministerial Decree on the list of types of hazardous work for young persons, including the number and nature of violations regarding young persons engaged in hazardous work, as well as the penalties imposed.*

*Article 7. Light work.* The Committee previously noted that according to section 101 of the Labour Law Amendment Act of 2013, children between the ages of 12 and 14 years may be employed in light work, defined as work that will not negatively impact the child's physical or mental health and does not obstruct their attendance at school or vocational training, and a list of types of light work shall be defined in a separate regulation.

The Committee notes with *satisfaction* that the Ministerial Decree on the List of Light Work for Young Persons has been adopted in 2016. Pursuant to sections 1 and 2, children aged 12–14 years are permitted to perform light work which will not jeopardize their physical, moral or mental development and education. Section 3 contains a comprehensive list of types of light work permitted in services, industry and handicraft, as well as in agriculture. Section 4 further provides that a child is not allowed to work more than two hours per day on school days or six hours per day during vacations. Moreover, a child shall not perform overtime work, work between 6 p.m. and 6 a.m., and other types of work as specified in section 5.

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

## Lebanon

### Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1977)

The Committee notes the observations of the General Confederation of Lebanese Workers (CGTL) communicated with the Government's report.

*Article 2(1) and (2) of the Convention. Preliminary medical examination by a qualified physician.* In its previous comments, the Committee noted the Government's information that section 22 of the Labour Code, as amended by Act No. 536 of 24 July 1996, makes a medical examination obligatory prior to employment of young persons aged 14–18 years. The Committee noted that, in addition to the provisions discussed in its previous comments, section 21 of the draft amendment to the Labour Code, which was prepared by the tripartite committee set up by the Ministry of Labour's Order No. 210/1 of 2000, prohibits the employment or engagement of young persons before undergoing a thorough medical test, which could include clinical, laboratory and X-ray tests if necessary, and which proves their fitness to fulfil the required work. The Committee noted the indication of the Government that it had submitted the draft amendment to the Labour Code to the Council of Ministers for its examination and approval, but that this was delayed due to a change in governments. The Government declared that, as soon as a new government was formed, the draft amendments would be submitted once again to the Council of Ministers for their re-examination.

The Committee notes the Government's indication in its report that there has not been any new development with respect to this draft amendment to the Labour Code since it is still under examination. It notes, from the observations of the CGTL, that the process of amendment to the Labour Code, including section 22, has begun. ***The Committee once again urges the Government to take the necessary measures to ensure that the draft amendment to the Labour Code, which dates back to 2000, is adopted as soon as possible, and to provide information on the progress made in this regard.***

*Articles 3(2) and 4(1). Medical re-examination for fitness for employment of persons under 18 and for employment in occupations involving high health risks, and repetition until the age of 21 years.* In its previous comments, the Committee noted that section 22 of Act No. 536 of 24 July 1996 refers to the medical examination conducted after beginning the employment for young persons under 18 years, and that section 1 of Order No. 157/1 of 2 August 2000 provides for the continuation of medical examination of young persons until the age of 21, for those who are engaged in work hazardous to health. The Committee noted that the draft amendment to the Labour Code provides for the repetition of the medical examination of young persons under 18 years at closer intervals than annually to ensure an efficient supervision of their medical condition with regard to the risks of their work. It noted the Government's indication that, during its inspection visits, the technical labour inspectorate did not detect any child workers under the age of 18 and that, therefore, there was no need for periodic medical examinations. However, the Committee recalled that *Article 4(1)* of the Convention requires medical examination and re-examinations for fitness for employment in occupations which involve high health risks until *at least the age of 21 years*.

The Committee notes the Government's indication that a draft new decision is being prepared which will determine the intervals for the repetition of medical re-examinations. ***Expressing the hope that the new decision determining the intervals for the repetition of medical examinations will include the determination of the intervals at which the medical re-examination is conducted for persons between 18 and 21 years of age engaged in work which involves high health risks, the Committee requests the Government to take measures to ensure that this new decision is adopted as soon as possible and to provide information on the progress made in this regard.***

*Article 6. Vocational guidance and rehabilitation of children and young persons found unsuited for work.* In its previous comments, the Committee noted that the Ministry of Social Affairs resorted to the non-governmental sector to provide a cluster of services to young persons. It observed, however, that no measures had been taken with regard to the vocational guidance or physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited or to have physical handicaps or limitations. The Committee noted the Government's information that the comments of the Committee on *Article 6* of the Convention would be submitted to the Supreme Council for Childhood, which is comprised of representatives of the ministries of Labour, Social Affairs, Justice, Public Health, Education and Higher Education, Foreign Affairs, Culture, Interior and Municipalities, Finance, Youth and Sports, and Information, for consideration. The Committee expressed the hope that the Government, along with the collaboration of the Supreme Council for Childhood, would undertake the necessary action as soon as possible in order to ensure effective application of *Article 6* of the Convention.

The Committee notes the Government's indication that it sent a letter to the Ministry of Social Affairs and Supreme Council for Childhood in that regard. ***Observing that it has been raising this point since 2000, the Committee urges the Government to take the necessary measures to ensure the effective application of Article 6 of the Convention. It asks the Government to supply information on any progress made in this regard in its next report.***

*Article 7(2). Enforcement of the Convention.* Following its previous comments, the Committee notes with *regret* that the Government did not provide information on the measures taken to enforce the Convention. It notes the Government's indication that it will send the relevant information when it becomes available. ***The Committee once again requests the Government to provide information on any other measures taken or envisaged to ensure the strict enforcement of the Convention.***

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1977)**

*Articles 1 and 2 of the Convention. Scope of application.* In its previous comments, the Committee noted that certain categories of children or young persons employed for wages, or working directly or indirectly for gain, in non-

industrial occupations other than the following categories, recognized by the competent authority as industrial, agricultural and maritime occupations, which are excluded from the application of the provisions of the Convention by virtue of section 7 of the Labour Code:

- (1) domestic work in private homes;
- (2) agricultural corporations which have no connection with trade or industry (they will be the subject of special legislation);
- (3) establishments in which only family members work under the direction of the father, the mother, or a guardian;
- (4) governmental and municipal services with regard to workers and wage earners employed on a temporary or daily basis who do not enjoy the status of civil servants and who will be covered by special legislation.

With respect to domestic work, the Committee noted the Government's information that current laws prohibit the employment of young persons under 18 years of age as domestic workers, making it unnecessary to provide for their medical examination under this Convention. With regard to workers employed by the public administration, the Government indicated that Decree No. 5883 of 3 November 1994 concerns the regulations applicable to employees and that municipal workers are subject to regulations adopted by each municipality.

The Committee noted the Government's information that the draft amendment to the Labour Code, prepared by the tripartite committee set up by virtue of Order No. 210 of 20 December 2000, deals with the first three abovementioned exceptions to the Labour Code. The Ministry of Labour was revising it so as to bring its provisions into better conformity with the provisions of the relevant ratified Conventions.

The Committee notes with *concern* the Government's indication in its report that the comments of the Committee will be taken into consideration when the draft amendment to the Labour Code is re-examined. ***Noting that it has been raising this point since 2000, the Committee urges the Government to take the necessary measures to ensure that the national legislation is brought into conformity with the provisions of the Convention with regard to their application to all occupations other than those recognized as industrial, agricultural and maritime occupations in Lebanon. It also once again requests the Government to take the necessary measures to ensure that the draft amendment to the Labour Code, which dates back to 2000, is adopted as soon as possible.***

*Article 7(2). Application of the Convention to children engaged in itinerant trading or on the streets or places to which the public has access.* The Committee previously noted the Government's intention to have the matter of the supervision of the application of the system of medical examination of fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets or in places to which the public has access, examined by the competent authorities, namely the relevant ministries. The Committee reminded the Government that even where there does not seem to be children or young persons working on their own account or account of their parents in itinerant trading or in another occupation carried out in the streets or in places to which the public has access, the Government must take the necessary measures to ensure that the system of medical examination for fitness for employment is applied in the event that children are employed in these circumstances in the future.

The Committee notes the Government's information that, in view of the increasing number of street children in Lebanon due to the displacement of Syrians, it needs to undertake in-depth studies, in coordination with international organizations and national departments, to meet the Committee's request. ***The Committee once again urges the Government to adopt the necessary measures to provide for supervision of the application of the system of medical examination for fitness of young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets or in places to which the public has access, and to provide information on any progress made in this respect.***

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2003)**

*Article 2(1) of the Convention. Scope of application.* In its earlier comments, the Committee noted that the Labour Code only applies to work performed under an employment relationship (by virtue of sections 1, 3 and 8 of the Code). The Committee recalled that the Convention applies to all branches of economic activity and covers all types of employment or work, whether they are carried out on the basis of an employment relationship or not, and whether they are remunerated or not. The Committee also noted that under Chapter 2, section 15, of the draft amendments to the Labour Code, it seemed that the employment or work of young persons would also include non-traditional forms of employment relationship. The Committee therefore requested that the Government provide information on the progress made in relation to the adoption of the provisions of the draft amendments to the Labour Code.

The Committee notes an absence of information in the Government's report on this point. ***Considering that the Government has been referring to the draft amendments to the Labour Code for a number of years, the Committee once again expresses the firm hope that the Government will take the necessary steps to ensure that the amendments to the Labour Code relating to self-employed children and children in the informal economy are adopted in the very near future. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

*Article 2(2). Raising the minimum age for admission to employment or work.* In its earlier comments, the Committee noted that, at the time of ratifying the Convention, Lebanon declared 14 years as the minimum age for

admission to employment or work and that Act No. 536 of 24 July 1996, amending sections 21, 22 and 23 of the Labour Code, prohibits the employment of young persons before the age of 14. The Committee also noted the Government's intention to raise the minimum age for admission to employment or work to 15 years of age and that the draft amendments to the Labour Code would include a provision in this regard (section 19). The Committee requested that the Government provide information on the progress made in the adoption of the provisions of the draft amendments to the Labour Code on the minimum age for employment or work.

The Committee notes the Government's indication in its report that the Committee's comments have been taken into account in the draft amendments to the Labour Code. The draft has also been submitted to the Council of Ministers for its examination. ***The Committee once again requests that the Government provide information on any progress made in the adoption of the provisions of the draft amendments to the Labour Code regarding the minimum age for employment or work.***

*Article 2(3). Compulsory education.* In its earlier comments, the Committee noted that the age limit for compulsory education is 12 years of age (Act No. 686/1998 relating to free and compulsory education at the primary school level). The Committee also noted the Government's indication that a draft law aimed at raising the minimum age of compulsory education to 15 years had been sent to the Council of Ministers for examination. The Committee requested that the Government indicate the progress made in this regard.

The Committee notes the Government's indication that the Ministry of Labour took into account the Committee's comments which were inserted in the draft amendments to the Labour Code. Moreover, the Committee notes that in its 2016 concluding observations, the UN Committee on Economic, Social and Cultural Rights is concerned at the number of children, especially refugee children, who are not in school or have quit school owing to the insufficient capacity of the educational infrastructure, the lack of documentation, and the pressure to work to support their families, among other reasons (E/C.12/LBN/CO/2, paragraph 62).

In this regard, the Committee recalls the necessity of linking the age of admission to employment to the age limit for compulsory education. If the two ages do not coincide, various problems may arise. If 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 (see General Survey on the fundamental Conventions, 2012, paragraph 370). Noting the Government's intention to raise the age of completion of compulsory schooling to 15 years, the Committee once again reminds the Government that pursuant to *Article 2(3)* of the Convention, the minimum age for admission to employment (currently 14 years) should not be lower than the age of completion of compulsory schooling. ***Therefore, the Committee urges once again the Government to intensify its efforts to raise the minimum age for admission to employment or work to 15 years, and to provide for compulsory education up until that age, within the framework of the adoption of the draft amendments to the Labour Code. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

*Article 6. Vocational training and apprenticeship.* In its earlier comments, the Committee noted that the Government had stated that the draft amendments to the Labour Code (section 16) had set the minimum age for vocational training under a contract at 14 years. The Committee expressed the firm hope that such a provision under the draft amendments would be adopted in the near future.

The Committee notes the Government's indication that section 16 will be adopted along with the draft amendments to the Labour Code. The Government also indicates that the National Centre for Vocational Training is in charge of carrying out vocational training and apprenticeships. ***The Committee once again expresses the firm hope that section 16 of the draft amendments to the Labour Code, setting a minimum age of 14 years for entry into an apprenticeship, in conformity with Article 6 of the Convention, will be adopted in the very near future.***

*Article 7. Light work.* In its earlier comments, the Committee noted that under section 19 of the draft amendments to the Labour Code, employment or work of young persons in light work may be authorized when they complete 13 years of age under certain conditions (except in different types of industrial work in which the employment or work of young persons under the age of 15 years is not authorized). The Committee also noted that light work activities would be determined by virtue of an Order from the Ministry of Labour. The Committee requested that the Government provide information on any progress made in this regard.

The Committee notes the Government's indication that it has asked for light work to be included in the ongoing ILO-IPEC Project "Country level engagement and assistance to reduce child labour in Lebanon" (CLEAR Project) and that a few meetings have been held in this regard. The Government indicates that, once the CLEAR Project is launched, it will be able to prepare a statute on light work in accordance with the relevant international standards. ***The Committee once again requests that the Government take the necessary measures to ensure the formulation and adoption of a statute determining light work activities, including the number of hours during which, and the conditions in which, light work may be undertaken. It requests that the Government provide information on the progress achieved.***

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Articles 3, 7(1) and (2)(b) of the Convention. Worst forms of child labour, penalties and direct assistance for rehabilitation and social integration. Clause (a). All forms of slavery or practices similar to slavery. Trafficking.* In its previous comments, the Committee noted the adoption of the Anti-Trafficking Act No. 164 (2011). The Committee requested the Government to provide information on the application of this Act, in practice.

The Committee notes the statistical information related to trafficking of children provided by the Government in its report. It notes that in 2014, five child victims of trafficking for labour exploitation (street begging), and one child victim of trafficking for sexual exploitation, were identified. According to the Government's indication, all the child victims identified were referred to social and rehabilitation centres, such as the "Beit al Aman" shelter in collaboration with Caritas. The Government also indicates that in 2014 the Higher Council for Childhood drafted a sectorial Action Plan on Trafficking of Children that is still under consultations with the relevant stakeholders.

The Committee also notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) recommended the Government to provide mandatory gender-sensitive capacity-building for judges, prosecutors, the border police, the immigration authorities and other law enforcement officials to ensure the strict enforcement of Act No. 164 to combat trafficking by promptly prosecuting all cases of trafficking in women and girls (CEDAW/C/LBN/CO/4-5, paragraph 30(a)). ***The Committee requests the Government to take the necessary measures to ensure that the draft sectorial Action Plan on Trafficking of Children is adopted in the near future, and to provide information on any progress made in this regard. The Committee also requests the Government to continue to provide information on the application in practice of Act No. 164 of 2011, including statistical information on the number of investigations, prosecutions, convictions and penal sanctions applied for the offence of trafficking of children. Lastly, the Committee requests the Government to provide information on any measures adopted in order to prevent trafficking of children as well as measures taken to ensure that child victims of trafficking are provided with appropriate rehabilitation and reintegration services.***

*Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities, in particular for the production and trafficking of drugs.* In its previous comments, the Committee noted that under section 33(b) and (c) of the draft amendments to the Labour Code, the use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities is punishable under the Penal Code, in addition to the penalties imposed by the Labour Code. It also noted that section 3 of Annex No. 1 of Decree No. 8987 of 2012 on hazardous work prohibits such illicit activities for minors under the age of 18. The Committee noted the statistical information (disaggregated by gender and age) provided by the Government on the number of children found engaged in prostitution from 2010 to 2012.

The Committee notes the Government's indication that the labour inspectorate is the body responsible for the supervision of the implementation of Decree No. 8987. The Committee notes with **concern** that according to the Government's indication no cases related to the application of the Decree have been detected so far. ***The Committee urges the Government to take immediate and effective measures to ensure the application in practice of the provisions of Decree No. 8987 of 2012 prohibiting the engagement of children for prostitution or pornographic purposes or for illicit activities. The Committee requests the Government to provide statistical information on any prosecutions and convictions made with regard to the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.***

***As for the draft amendments to the Labour Code, the Committee once again requests the Government to take the necessary measures without delay to ensure the adoption of the provisions prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography or for pornographic performances, and the use, procuring or offering of persons under the age of 18 for illicit activities, as well as of the provisions providing for the penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. Refugee children.* In its previous comments, the Committee requested the Government to provide information on the measures taken within the work programme of the National plan of action on the elimination of child labour (NAP-WFCL) for working Palestinian children to protect them from the worst forms of child labour.

The Committee notes the Government's indication that no new measures have been taken due to the political and security situation in the country. The Committee also notes that according to the 2016 United Nations High Commissioner for Refugees (UNHCR) report entitled "Missing out: Refugee Education in Crisis", there are more than 380,000 refugee children between the ages of 5 and 17 registered in Lebanon. It is estimated that less than 50 per cent of primary school-age children have access to public primary schools and less than 4 per cent of young persons have access to public secondary schools. The report highlights that since 2013 the Government has introduced a two-shift system in public schools to encourage the enrolment of refugee children. About 150,000 children have entered this system. It also notes from the ILO report entitled "ILO response to the Syrian Refugee crisis in Jordan and Lebanon", of March 2014, that many refugee children are working in hazardous conditions in the agricultural and urban informal sector, street peddling or begging. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take effective and time-bound measures to protect refugee children (in particular Syrian and Palestinian) from the***

*worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the number of refugee children who have benefited from any initiatives taken in this regard, to the extent possible disaggregated by age, gender and country of origin.*

2. *Children in street situations.* The Committee notes the Government's indication that the Ministry of Social Affairs has taken a series of measures to address the situation of street children, including: (i) undertaking activities to raise awareness through education, media and advertisement campaigns; (ii) training of a certain number of social protection actors/players working in child protection institutions; (iii) providing rehabilitation activities for a certain number of street children and their reintegration in their families; (iv) within the framework of the Poverty Reduction Strategy (2011–13) 36,575 families have been chosen to benefit from free basic social services, such as access to free compulsory public education as well as medical facilities. The Government also indicates that the 2010 draft "Strategy for Protection, Rehabilitation and Integration of Street Children" has not been implemented yet, but is in the process of being revised.

The Committee notes the 2015 study "Children Living and Working on the Streets in Lebanon: Profile and Magnitude" (ILO–UNICEF–Save the Children International) which provides detailed statistical information on the phenomenon of street-based children across 18 districts of Lebanon. The Committee also notes that the report comprises a certain number of recommendations, including: (i) enforcing relevant legislation; (ii) reintegrating street-based children into education and providing basic services; and (iii) intervening at the household-level to conduct prevention activities. The Committee further observes that despite street work being one of the most hazardous forms of child labour under Decree No. 8987 on hazardous forms of child labour (2012), it is still prevalent with a total of 1,510 children found to be living or working on the streets. Moreover, the Committee notes that in its 2016 concluding observations, the UN Committee on Economic, Social and Cultural Rights recommended that the Government raise resources so as to provide the necessary preventive and rehabilitative services to street children and enforce existing legislation aimed at combating child labour (E/C.12/LBN/CO/2, paragraph 45). *Recalling that street children are particularly vulnerable to the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children, and to provide for their rehabilitation and social reintegration. The Committee also urges the Government to take the necessary measures to actively implement the 2010 draft strategy entitled "Strategy for Protection, Rehabilitation and Integration of Street Children", once revised and report on the results achieved. Finally, the Committee requests the Government to provide information on the number of street children who have been provided with educational opportunities and social integration services.*

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

## Madagascar

### **Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124) (ratification: 1967)**

The Committee notes the observations from the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 4 September 2017 and requests the Government to provide its comments in this respect.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

The Committee takes note of the Government's report and the communication of 27 August 2012 from the General Confederation of Workers' Unions of Madagascar (CGSTM).

*Article 2(1) of the Convention and Part V of the report form. Medical examination of persons under 21 years of age prior to underground work in mines and application of the Convention in practice.* The Committee noted previously that section 82 of Decision No. 58-AR of 8 May 1958 setting forth the safety rules applying to mines and quarries provides that no worker may be assigned to underground work without first undergoing a medical examination finding him to be fit for such employment. The Committee also noted that sections 7, 8 and 9 of Order No. 2806 of 8 July 1968 to organize occupational medical services provide in particular that employers must have regular visits organized for periodic medical examinations and that all workers are required to undergo a medical examination that includes an x-ray film of the lungs prior to taking up employment or in the month following at the latest. Furthermore, the Committee noted with interest that by virtue of section 8 of Decree No. 2003-1162 of 17 December 2003 to organize occupational medicine, every worker, before being hired or at the latest in the month after being hired, "shall undergo a medical examination consisting of at least an x-ray film of the lungs". Pursuant to sections 7 and 9 of the Decree, periodical medical examinations are also compulsory and include "special medical examinations for workers exposed to the risk of occupational diseases".

The Committee notes the CGSTM's assertion that to its knowledge, there are no longer any mining companies in Madagascar's formal sector that carry on underground work and employ young persons within the meaning of the Convention. The problem does arise, however, in family undertakings in the informal sector, for example in the sapphire mines of the Ilakaka region, in which minors work up to 50 meters underground without proper safety precautions or ventilation. The CGSTM reports that the absence of adequate legislation means that these young people undergo neither a pre-employment medical examination to ascertain their fitness nor any regular medical checks. Lastly, the CGSTM states that the Government has not as yet undertaken any action to resolve the problem.

The Committee observes that children working in family undertakings on an informal basis appear not to be covered by the legislation regarding medical examinations. The Committee points out that according to *Article 2* of the Convention, a thorough

medical examination for fitness for employment and periodic re-examinations at intervals of not more than one year shall be required for the employment or work underground in mines of persons under 21 years of age, regardless of whether the work is performed in the formal sector or the informal economy and whether or not it is based on an employment relationship. **The Committee asks the Government to take steps to ensure that all children and young persons under 21 years of age enjoy the protection afforded by the Convention, particularly those who work in family undertakings in mining and quarrying in the informal sector. It asks the Government to provide information on these matters in its next report, and particularly on the effect given in practice to the provisions requiring a pre-employment medical examination and subsequent periodic re-examinations for young persons under 21 years of age working underground in family undertakings in the informal sector.**

*Article 5(4) and (5). Records pertaining to employees under 21 years of age.* In its previous comments the Committee noted that according to the Government, a record must be kept by the employer and must consist of three parts: personal particulars, data concerning the worker's position within the undertaking and a separate section for visas, observations and warnings issued by the labour inspector to the undertaking. The Committee noted that although the sample record provided by the Government in its report clearly indicates the employee's date of birth, it contains no indication of the nature of the work and does not include a certificate attesting fitness for employment, as required by *Article 4(4)* of the Convention. The Committee nonetheless noted that by virtue of section 6 of Decree No. 2007-563 on child labour, the employer must keep a record showing the full identity, the type of work, the wage, the number of hours of work, the state of health, the schooling and the situation of the parents of each child employee under the age of 18 years.

The Committee notes the information supplied by the Government to the effect that Order No. 129-IGT of 5 August 1957 establishing a standard employer's register, pursuant to section 252 of the Labour Code, is still in force. The Government states that the Order needs revision in order to adapt it to present circumstances and that the Committee's recommendations will be forwarded to the National Labour Council, a body for tripartite consultation. The Committee accordingly observes that it would appear that there is still no requirement for employers' records to contain a certificate of fitness for employment in respect of young persons aged from 18 to 21 years engaged in underground work. **The Committee again asks the Government to take the necessary steps to ensure that employers are required to keep a record showing the date of birth, duly certified wherever possible, an indication of the nature of the occupation and a certificate attesting fitness for employment, for all persons between 18 and 21 years of age who are employed or work underground, and to make these records available to the workers' representatives at their request. It asks the Government to supply information on progress made in this regard in its next report.**

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

## Malawi

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

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Articles 3 and 7 of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted that section 179(1) of the Child Care, Protection and Justice Act provides that a person who takes part in any transaction involving child trafficking is liable to life imprisonment. The Committee observed, however, that according to section 2(d) of the same Act, a "child" means a person below the age of 16 years. The Committee reminded the Government that by virtue of *Article 3(a)* of the Convention, member States are required to prohibit the sale and trafficking of all children under 18 years of age.

The Committee notes the Government's indication that it has taken note of this observation and that this matter will be taken up with the Malawi Law Commission. The Government further indicates that it will provide information on the application in practice of the Child Care, Protection and Justice Act in subsequent reports, since the Act has only recently come into force. The Committee further notes that, according to the concluding observations of the Human Rights Committee of 18 June 2012, in consideration of the reports submitted under the International Covenant on Civil and Political Rights (CCPR/C/MWI/CO/1, paragraph 15), Malawi has drafted an anti-trafficking bill which should be considered by Parliament soon. **The Committee accordingly once again urges the Government to take immediate measures to ensure that the Child Care, Protection and Justice Act is amended to extend the prohibition of sale and trafficking to cover all children under the age of 18, as a matter of urgency, and to ensure that the anti-trafficking bill prohibits the sale and trafficking of all children under the age of 18, and is adopted as soon as possible. The Committee also, once again, requests the Government to provide information on the application in practice of this Act, as well as of the anti-trafficking bill once adopted, including in particular, statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed.**

*Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.* In its previous comments, the Committee noted the Government's statement in its report to the Committee on the Rights of the Child (CRC) of 17 July 2008, that, while there are no data available on the number of children involved in sexual exploitation, including prostitution and pornography, these are recognized problems in the country (CRC/C/MWI/2, paragraph 323). In this regard, it noted that section 87(1)(d) of the Child Care, Protection and Justice Act only provides that a social welfare officer who has reasonable grounds to believe that a child is being used for the purposes of prostitution or immoral practices, may remove and temporarily place the child in a place of safety. The Committee reminded the Government that *Article 3(b)* of the Convention requires member States to prohibit the use, procuring or offering of a child under 18 years for prostitution, for the production of pornography or for pornographic performances.

The Committee once again notes the Government's indication that it will endeavour to include the prohibition against the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, in the labour laws currently under review. The Government also indicates that, meanwhile, the Censorship Board is doing its best to censor pornography. However, the Committee must once again express its *deep concern* at the continued lack of regulation to prohibit the commercial sexual exploitation of children, and once again draws the Government's attention to its obligation under *Article 1* to take immediate measures to prohibit the worst forms of child labour, *as a matter of urgency*. **The Committee accordingly, once again, urges the Government to take the necessary measures, as a matter of urgency, to ensure the adoption of national legislation prohibiting the use, procuring or offering of both boys and girls under 18 years of age, for the purpose of prostitution, for the production of pornography or for pornographic performances, and to include sufficiently effective and**

**dissuasive sanctions in this legislation. It requests the Government to provide information on the progress made in this regard with its next report.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from these types of work and for their rehabilitation and social integration. Children engaged in hazardous work in commercial agriculture, particularly tobacco estates.* In its previous comments, the Committee noted that the CRC, in its concluding observations of 27 March 2009, expressed concern that many children between 15–17 are engaged in work that is considered as hazardous, especially in the tobacco and tea estate sector, which continues to be a major source of child labour (CRC/C/MWI/CO/2, paragraph 66). The Committee noted the Government's information that labour inspections were undertaken in the tobacco sector, to help withdraw children from this sector, to rehabilitate and then to send them back to school. It further noted that it is indicated in the National Action Plan (NAP) on Child Labour that the agricultural sector, including tobacco plantations and family farms, constitutes one of its sectoral priorities, as it accounts for 53 per cent of child labour in the country.

The Committee notes that, according to the 2011 surveys conducted in Mzimba, Mulanje and Kasungu, child labour continues to be dominated by the agricultural sector. In Mzimba, 36.6 per cent of the interviewed children worked in agriculture; and in Mulanje and Kasungu, 23 per cent and 20.4 per cent of the interviewed children respectively had worked in a plantation, farm or garden. All three surveys reported that these children often worked in hazardous conditions without protective gear, and with hazardous equipment such as hoes, ploughs, saws, sickles, panga knives and sprayers. ***Expressing its concern at the number of children engaged in hazardous work in agriculture, the Committee once again urges the Government to strengthen its efforts to protect children from hazardous work in this sector, in particular in tobacco plantations, through measures taken within the framework of the NAP on Child Labour. In this regard, it once again requests the Government to provide concrete information on the number of children who have been thus prevented or withdrawn from engaging in this type of hazardous work, and then rehabilitated and socially integrated.***

*Clause (e). Special situation of girls.* The Committee previously noted that, according to the Malawi Child Labour Survey of 2002, all the child victims of commercial sexual exploitation were girls. Half of these girls had lost both of their parents, while 65 per cent of them did not attend school past the second year. The Committee also noted that the Committee on the Elimination of Discrimination Against Women (CEDAW), in its concluding observations of 5 February 2010, expressed concern at the extent to which women and girls are involved in sexual exploitation, including prostitution, and the limited statistical data regarding these issues (CEDAW/C/MWI/CO/6, paragraph 24). It therefore requested the Government to provide information on the measures taken to protect girls under the age of 18 from commercial sexual exploitation.

***The Committee once again urges the Government to strengthen its efforts to prevent girls under the age of 18 from becoming victims of commercial sexual exploitation, and to remove and rehabilitate victims of this worst form of child labour, within the framework of the NAP on Child Labour or otherwise. It once again requests the Government to provide information on the concrete measures taken in this regard, as well as information on the impact of these measures, with its next report. To the extent possible, all information provided should be disaggregated by age and sex.***

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

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

## Myanmar

### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6) (ratification: 1921)**

*Article 2(1) of the Convention. Prohibition on employing children under 18 years of age at night in industrial undertakings.* The Committee previously noted that under the terms of section 79(1)(a) of the Factories Act 1951 (No. LXV), no child (person under the age of 15 years, by virtue of section 2(a)) shall be employed or permitted to work in any factory between the hours of 6 p.m. and 6 a.m. However, the Committee noted the Government's information that a young person between 15 and 18 years of age (adolescents, by virtue of section 2(b)) who is certified as being fit for work as an adult in factories may be employed at night. It further noted the Government's information that the process of amending section 79(1) of the Factories Act to bring it into conformity with this Convention was being carried out.

The Committee notes the Government's information in its report that the provisions of the Factories Act relating to children under 18 years of age were amended. While the amended provisions prohibit night work for young persons up until the age of 16, the Committee notes with **concern** that, young persons between the ages of 16 and 18 may be declared by a registered medical doctor to be fit for employment and allowed to work between the hours of 6 p.m. and 6 a.m. (section 79(3) of the amended Factories Act). The Committee recalls that *Article 2(1)* of the Convention prohibits the employment of all young persons *under the age of 18* during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed. Under *Article 3(1)* of the Convention, the term "night" signifies a period of 11 consecutive hours, including the interval between 10 p.m. and 5 a.m. ***The Committee therefore requests the Government to take measures to ensure that section 79 of the amended Factories Act is once again modified to prohibit the night work of all young persons under the age of 18 for a period of eleven consecutive hours, including from 10 p.m. to 5 a.m. It requests the Government to provide information on the progress made in this regard.***

## Nicaragua

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1981)**

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* The Committee previously noted the measures taken to improve the functioning of the education system, in particular access to free primary and secondary education and the adoption of a National Education Strategy (2010–15). In view of the fact that the 2006 Education Act provides that schooling is compulsory only up to the age of 12, the Committee strongly encouraged the Government to take the necessary steps to ensure that the age of completion of compulsory schooling coincided with the minimum age for admission to employment or work, namely 14 years.

The Committee notes with *regret* that the Government's report does not contain any information on the steps taken to make the age of completion of compulsory schooling coincide with the minimum age for admission to employment or work, namely 14 years. The Committee notes that, even though article 121 of the Constitution of Nicaragua provides that primary education shall be free of charge and compulsory, section 19 of the 2006 Education Act states that schooling is only compulsory up to the sixth year of primary school (namely, up to about the age of 12). In this regard, the Committee is bound to remind the Government once again that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (see General Survey of 2012 on the fundamental Conventions, paragraph 371). ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee once again requests the Government to take the necessary steps to guarantee compulsory schooling up to the minimum age of admission to employment or work, namely 14 years. It also requests the Government to pursue its efforts to raise the school attendance rate and reduce the school dropout rate in order to prevent the labour of children under 14 years of age. It requests the Government to provide information on progress made in this regard.***

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Articles 3(a) and (b), and 7(1) of the Convention. Sale and trafficking of children, use, procuring or offering of a child for prostitution, the production of pornography or pornographic performances, and penalties.* In its previous comments, the Committee noted the provisions of the Penal Code which prohibit and penalize the sale and trafficking of children, the sexual exploitation of children and the use of children in the production of pornography or pornographic performances. The Government indicated that the Public Prosecutor's Office had initiated criminal proceedings with regard to 19 offences relating to the sexual liberty of children, 12 offences relating to trafficking for sexual exploitation and six offences relating to pornography and paid sexual acts with minors. The Committee also noted the capacity-building measures for law enforcement bodies adopted by the Government, with such measures having reached a total of 1,500 public officials. The Committee further noted that the Public Prosecutor's Office, the police and the Nicaraguan Institute of Tourism (INTUR) had carried out joint investigations in bars, canteens, night clubs and hotels in border and tourist areas to prevent and detect cases of sexual exploitation of children in order to initiate criminal proceedings and direct child victims to specialized shelters. In addition, INTUR had launched an awareness-raising campaign among travel agents and enterprises to prevent child sex tourism.

The Committee notes with *interest* the adoption in 2015 of the Act against Trafficking in Persons. Section 1 of the Act defines its purpose as being the prevention of trafficking in persons and the prosecution and punishment of perpetrators, and also defines specific and effective mechanisms for saving victims, particularly children and young persons. Section 3 provides that the Act shall apply to the perpetrators of trafficking both inside and outside the country. The Committee also notes that section 7 provides for the setting up of a National Coalition against Trafficking in Persons, which shall be responsible for formulating, implementing, evaluating and monitoring public policies for the prevention, prosecution and punishment of trafficking and also for the protection of victims. The Committee notes the Government's indication in its report that in 2015–16 prosecutions were initiated in 17 cases, resulting in 14 convictions for sexual exploitation, pornography and paid sexual acts with young persons. The Government also indicates that prosecutions were launched in 11 cases, yielding nine convictions for the offence of trafficking in persons, without specifying the number of cases in which the victims were under 18 years of age. ***The Committee requests the Government to provide information on the implementation of the Act against Trafficking in Persons and also on the activities of the National Coalition against Trafficking in Persons, aimed at combating the trafficking of children and providing protection for victims. It requests the Government to continue providing information on the number of reported violations, investigations, prosecutions, convictions and penalties applied under the Penal Code.***

*Article 3. Clause (d). 1. Hazardous work in agriculture.* In its previous comments, the Committee noted that 70.5 per cent of children between the ages of 7 and 14 years worked in agriculture. It also noted the adoption of Ministerial Decision JCHG-08-06-10 of 19 August 2010, which prohibits hazardous work for children and young persons under 18 years of age and contains a detailed list of hazardous types of work. The Committee also noted the steps taken by the Government relating to special inspection services to give effect to Ministerial Decision JCHG-08-06-10, with particular emphasis on the protection of children working in limestone quarries. The Committee noted the Government's indication that inspections were conducted in 1,272 workplaces covering all sectors of the economy, where 236 children

were identified as working in hazardous conditions, and that in the wake of these inspections 1,758 young persons benefited from protection measures relating to their rights as workers. The Government also indicated that it had implemented specific inspection plans relating to child labour in the departments of Jinotega and Matagalpa, which are characterized by their high levels of coffee production.

The Committee notes the Government's indication that a total of 194 violations were reported in the agricultural and stockbreeding sectors. It also notes that a total of 2,831 certificates were issued to young persons between 14 and 18 years of age, in accordance with Ministerial Decision JCHG-08-06-10 concerning the prohibition of hazardous work for children and young persons. However the Committee notes once again that the Government's report does not contain any information on the number of violations reported or the penalties imposed. ***The Committee requests the Government to continue intensifying its efforts to ensure that children under 18 years of age employed in agriculture do not perform hazardous work. In this regard, the Committee requests the Government to continue providing information on the application of Ministerial Decision JCHG-08-06-10 of 19 August 2010 in practice, including the number of inspections carried out, violations reported and penalties imposed.***

2. *Hazardous child domestic labour.* In its previous comments, the Committee noted the information supplied by the Government on the application of the Domestic Work Act (No. 666) of 4 September 2008, which protects young persons in domestic service by laying down recruitment and working conditions and prescribing penalties for abuse or humiliation of workers or violence against them. It also noted the Government's indication that 1,999 labour inspections had been carried out in households where 17 young persons were found engaged in domestic work. As regards follow-up to the registration of children and young persons engaged in domestic work, the Government stated that five seminars organized in the departments of Estelí, Nueva Segovia, Madriz Masaya and Managua to provide information on rights at work and educational scholarships had been attended by 149 young persons.

The Committee notes the Government's indication that special inspections have been carried out as part of the implementation of Ministerial Decision JCHG-08-06-10. Accordingly, 39 cases of young persons working in domestic service have been reported. The Government states that employers have been instructed by means of an administrative decision to put a stop to these violations. ***The Committee requests the Government to pursue its efforts to ensure the protection guaranteed by Act No. 666 of 4 September 2008 to children and young persons in domestic work and to continue providing information on the number of inspections carried out. Noting the violations reported, the Committee requests the Government to indicate whether penalties have been imposed on the perpetrators.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* In its previous comments, the Committee noted that the Ministry of Education had enrolled 1,635,000 children and young persons in pre-primary, primary and secondary schools. It also noted that despite the Government's efforts, the percentage of children in secondary education remained low despite some improvement (43 per cent for boys and 49 per cent for girls). The Committee notes the UNICEF country programme document for 2013–17, which indicates that the Government will place special emphasis on the educational system of the autonomous regions to provide intercultural and bilingual education so that indigenous children and children of African descent have access to quality education. According to the document, the Government will also continue to improve school infrastructure in terms of access to water and sanitation in schools (E/ICEF/2012/P/L.31, paragraphs 36 and 38). ***The Committee requests the Government to continue to take the necessary steps to improve the functioning of the education system and to improve the school attendance and completion rates, while placing particular emphasis on tackling gender inequalities in access to education and regional disparities. It also requests the Government to provide data on the results achieved, disaggregated by age and gender.***

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Child labour in agriculture.* In its previous comments, the Committee noted that as part of the "Coffee harvesting without child labour" programme, a number of tripartite cooperation agreements had been signed between the Ministries of Labour, Education and Health, coffee producers and key actors in the agricultural sector. The Committee also noted that as part of the "From work to school" programme, a number of children had been withdrawn from working in mines and breaking stones in the municipalities of Chinandega, El Rama and El Bluff. The programme provided these children with services in the areas of education, health care and recreation.

The Government indicates that as a result of implementing various programmes aimed at protecting the rights of children and young persons in agriculture, the participation of employers, producers and the general public has increased and the model of dialogue and consensus between employers, workers and the Government has improved. ***While duly noting the general progress indicated by the Government, the Committee encourages the Government to pursue its efforts and requests it to provide information on the results achieved under the various programmes aimed at withdrawing children and young persons from hazardous work in agriculture and on the measures taken to ensure their rehabilitation and social integration.***

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

## Nigeria

### **Minimum Age (Underground Work) Convention, 1965 (No. 123)** (ratification: 1974)

*Article 4(5) of the Convention.* Employer's obligation to make available to the workers' representatives, at their request, the list of persons employed in work underground. The Committee previously noted that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his or her employment with particulars of their ages, the date of employment and the conditions and nature of their employment, and to produce the register for inspection when required by an authorized labour officer. It further noted that under section 91(1) of the same Act, "young person" means a person under the age of 18 years and "industrial undertaking" includes mines, quarries and other works for the extraction of minerals from the earth.

The Committee notes the Government's indication, in its report, that the Labour Standards Bill of 2008 (the Labour Standards Bill) which was pending before the National Assembly, has been removed for further revision. The Committee notes that section 10 of the Labour Standards Bill provides that every employer of young persons shall keep a register of all young persons in his or her employment with particulars of their ages, the date of employment and the conditions and nature of their employment, and such other particulars as may be prescribed, and shall produce the register for inspection when required by a labour officer. Section 60 defines a "young person" as being any person under the age of 18 years. The Committee notes with *regret* that the Labour Standards Bill does not provide for the employer to make that register of young persons in employment available to the workers' representatives at their request. The Committee, once again, observes that for a number of years it has been requesting the Government to indicate the measures taken to give effect to the Convention (*Article 4(5)*), under which the employer shall make available to the workers' representatives, at their request, the list of the persons who are employed in work underground and who are less than two years older than the minimum age specified by the Government, which is 16 years. The list should contain the dates of birth of the employees, as well as dates at which they were employed or worked underground in the undertaking for the first time. **The Committee therefore requests that the Government take the necessary measures to revise the Labour Standards Bill to ensure that the register of young persons in employment is made available to workers' representatives, at their request, in order to bring its national legislation into conformity with the provisions of Article 4(5) of the Convention. The Committee requests the Government to provide information on the progress made in this regard.**

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2002)**

*Article 1 of the Convention.* National policy and application of the Convention in practice. The Committee previously noted the adoption of a National Policy on Child Labour, 2013, followed by a National Action Plan for the Elimination of Child Labour 2013–17 (NAP). It noted that the ultimate goal of the National Policy on Child Labour is to provide standardized guidelines for actors implementing the NAP with a view to drastically reducing the prevalence of child labour by 2015 and its total elimination by 2020. The Committee noted from the Government's report that the National Policy on Child Labour would be implemented through cost-effective measures. The Committee further noted that according to a report entitled "The twin challenges of child labour and educational marginalization in the ECOWAS region" by Understanding Children's Work, a joint ILO–UNICEF–World Bank interagency research cooperation project, among the ECOWAS countries, Nigeria has the largest number of 5–14 year olds in child labour, with 10.5 million children involved in child labour. The Committee expressed its deep concern at the large number of children under the minimum age for admission to employment who are working in Nigeria.

The Committee notes the Government's information in its report that it has taken the initiative to avail itself of ILO technical support in strengthening the implementation of the NAP. In this regard, the Government reports that meetings have been held with various stakeholders and a national reporting template on child labour has been developed. It further indicates that the reporting template will serve as a monitoring and evaluation mechanism thereby ensuring that the activities of each stakeholder are harmonized. It will also provide a benchmark for the annual report on child labour activities in the country. The Committee takes note, from the ILO Office in Abuja, that this reporting template has been validated by the members of the National Steering Committee on child labour, along with guidelines for completing the reporting template. These documents will help the Child Labour Unit monitor the interventions on the elimination of child labour at the national level. **While noting the steps taken by the Government, the Committee urges it to strengthen its efforts to ensure the elimination of child labour. The Committee further requests that the Government continue to provide detailed information on the implementation of the NAP and the results achieved in eliminating child labour in the country, in particular results from the reporting templates. Lastly, the Committee requests that the Government provide information on the manner in which the Convention is applied in practice, including updated statistical data on the employment of children and young persons, especially regarding children working in the informal economy, as well as extracts from the reports of inspection services and information on the number and nature of violations detected and penalties applied. To the extent possible, this information should be disaggregated by age and gender.**

*Article 2(1). Scope of application.* 1. *Self-employment and work in the informal economy.* The Committee previously noted that according to section 2 of the Labour Standards Bill of 2008 (Labour Standards Bill), the Labour Act applies to all employees. An "employee", according to section 60 of the Bill, means any person employed by another

under oral or written contract of employment, whether on a continuous, part-time, temporary or casual basis, and includes a domestic servant who is not a member of the family of the employer. The Committee observed that children working outside a formal labour relationship, such as children working on their own account or in the informal economy, are excluded from the provisions giving effect to the Convention. In this regard, the Committee noted from the document on the National Policy on Child Labour, 2013, that child labour is more prevalent in the informal sector, which includes crafts and artisanal work and street-related activities, as well as in semi-formal sectors which includes activities in commercial agricultural plantations, domestic and hospitality services, the transport industry, and garment manufacturing. The Committee noted the statement made by the Government representative of Nigeria to the Conference Committee on the Application of Standards of June 2016 that the Government had commenced the process of withdrawing the Labour Standards Bill, which was pending before the National Assembly, for further revision. The Government representative further indicated that this revision would be done in consultation with the social partners, and would take into consideration the issues relating to ensuring protection for all working children, including self-employed children and children working in the informal economy. The Committee urged the Government to take the necessary measures to revise the Labour Standards Bill, thereby ensuring the protection for all working children, including self-employed children and children working in the informal economy. It also requested that the Government take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy with a view to ensuring such protection in this sector.

The Committee notes the Government's information that the Labour Standards Bill has been withdrawn from the National Assembly and is now being reviewed by the Tripartite Technical Committee. The Government indicates that the Tripartite Technical Committee has made the necessary amendments to ensure that the definition of an "employee" gives protection to all working children in both the formal and informal economy. This is reflected in the minutes of the Stakeholders Committee on the Review of the National Labour Bills of 4 May 2017, attached to the Government's report. ***The Committee urges the Government to take the necessary measures to ensure that the Labour Standards Bill, which establishes the protection of all working children, including self-employed children and children working in the informal economy, is officially adopted in the near future. It requests that the Government provide information on any progress made in this regard. It further requests that the Government provide information on the measures taken with regard to strengthening the capacity and expanding the reach of the labour inspectorate to the informal economy.***

2. *Minimum age for admission to work.* The Committee previously noted with concern the various minimum ages, some of them too low, prescribed by the national legislation. It noted that section 8(1) of the Labour Standards Bill prohibits the employment of a child (defined as persons under the age of 15 years (section 60)), in any capacity, except where he/she is employed by a member of his/her family on light work of an agricultural, horticultural or domestic character. The Committee observed that section 8(1) which establishes a minimum age of 15 years for employment or work as specified at the time of ratification is in conformity with *Article 2(1)* of the Convention.

The Committee takes note of the indication of the Government that the minimum age for employment or work is 15 years, as per the minutes of the Stakeholders Committee on the Review of the National Labour Bills of 4 May 2017. ***The Committee urges the Government to take the necessary steps to ensure that the Labour Standards Bill, which establishes a minimum age of 15 years for employment or work, is adopted in the near future. It requests that the Government provide information on any progress made in this regard.***

*Article 3(2). Determination of hazardous work.* The Committee previously noted from a report entitled "List of hazardous child labour in Nigeria", 2013, by the Federal Ministry of Labour and Productivity, that a study was conducted to identify and determine the most hazardous conditions to which children under 18 years are exposed in various occupations in Nigeria. The study identified certain hazardous types of work, including agriculture (cocoa and rice farming), quarrying, artisanal mining, traditional tie and dye, processing of animal skin, domestic services, scavenging and recycling collection, street work, begging, construction and transport works. The Committee noted that at the Conference Committee, the Government representative of Nigeria stated that the "List of hazardous child labour in Nigeria", which provided maximum protection for children from extremely hazardous working conditions, had been adopted. The Committee noted with concern that the copy of the hazardous list, which the Government representative of Nigeria was referring to and which had been sent along with its recent report, was not a regulation prohibiting hazardous types of work, but a study that was conducted by a technical subcommittee set up by the National Steering Committee to identify the most hazardous conditions to which children under 18 years are exposed in Nigeria. The report based on the study, in its recommendations, states that "the urgent need to prohibit the involvement of children in identified tasks/activities should be accorded priority". The Committee further noted the ILO-IPEC information that the final list of hazardous work identified in the study has been validated by the National Steering Committee and is currently awaiting official endorsement.

The Committee notes the Government's information that the necessary amendments were made to establish the list of hazardous work prohibited to children under 18 years of age. It notes from the minutes of the Stakeholders Committee on the Review of the National Labour Bills of 4 May 2017, that in relation to the list of hazardous work drafted by the National Steering Committee, section 60 of the Labour Standards Bill should have as its first schedule, section 7(2)(d): "List of hazardous work". ***The Committee once again urges the Government to take the necessary measures, without delay, to ensure that the list of types of hazardous child labour is adopted and implemented, thereby prohibiting***

**hazardous types of work to children under 18 years of age. It requests that the Government provide information on the progress made in this regard.**

*Article 6. Apprenticeship.* The Committee previously noted that section 49(1) of the Labour Act permitted a person aged 12–16 years to undertake an apprenticeship for a maximum period of five years, while section 52(a) and (e) empowered the Minister to issue regulations on the terms and conditions of apprenticeship. It observed that sections 46 and 47 of the Labour Standards Bill of 2008 lay down the terms and conditions for entering into a contract of apprenticeship, but do not specify a minimum age. The Committee noted the statement made by the Government representative to the Conference Committee that the revision of the Labour Standards Bill would establish a minimum age of 14 years for apprenticeship programmes.

The Committee notes the Government's information that the Stakeholders Committee on the Review of the National Labour Bills has agreed to establish the minimum age of 14 years for apprenticeship programmes, and therefore amend section 46 of the Labour Standards Bill accordingly. **The Committee urges the Government to take the necessary steps to ensure that the Labour Standards Bill, establishing a minimum age of 14 years for apprenticeship programmes, is revised and adopted in the near future. It requests that the Government provide information on any progress made in this regard.**

*Article 7(1). Minimum age for admission to light work.* The Committee previously observed that the Labour Act did not provide for a minimum age for admission to light work. It also noted that section 8 of the Labour Standards Bill, while allowing the employment of children under the age of 15 years in light work of an agricultural, horticultural or domestic character, does not indicate the lower minimum age at which such work may be permitted. In this regard, the Committee noted that according to the Multiple Indicator Cluster Survey Report of 2011 (UNICEF–National Bureau of Statistics, Nigeria), 47 per cent of children aged between 5 and 14 years were engaged in child labour. It reminded the Government that, according to *Article 7(1)* of the Convention, national laws or regulations may permit children aged 13–15 years to perform light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received. The Committee noted the statement made by the Government representative to the Conference Committee that the revision of the Labour Standards Bill would fix the lower minimum age of 13 years for admission to light work.

The Committee notes the Government's indication that the Stakeholders Committee on the Review of the National Labour Bills has agreed to establish the minimum age of 13 years for admission to light work. **The Committee accordingly urges the Government to take the necessary steps to ensure that the Labour Standards Bill establishing a minimum age of 13 years for admission to light work is adopted in the near future. It requests that the Government provide information on any progress made in this regard.**

*Article 7(3). Determination of light work.* In its previous comments, the Committee observed that the conditions in which light work activities may be undertaken and the number of hours during which such work may be permitted were not clearly defined in the Labour Act. It also observed that the maximum working hours of eight hours per day prescribed under section 59(8) of the Labour Act would necessarily prejudice the attendance of young persons below the age of 15 years at school or vocational orientation or training programmes, as laid down under *Article 7(1)(b)* of the Convention. It noted that the Labour Standards Bill did not contain any provision regulating the employment of children in light work. The Committee drew the Government's attention to Paragraph 13(b) of the Minimum Age Recommendation, 1973 (No. 146), which states that, in giving effect to *Article 7(3)* of the Convention, special attention should be given to the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training, for rest during the day and for leisure activities. The Committee noted the statement made by the Government representative that the revision of the Labour Standards Bill would ensure that the light work activities by children aged 13 years and above is regulated.

The Committee notes the Government's indication that the Stakeholders Committee on the Review of the National Labour Bills agreed with the ILO recommendations on light work conditions and maximum hours of work, but requests further ILO technical assistance for the drafting of the list of light work conditions. **The Committee accordingly urges the Government to take the necessary measures, during the current revision of the Labour Standards Bill, to regulate the employment of persons between 13 and 15 years of age in light work, by determining the number of hours during which, and the conditions in which, light work in the agricultural, horticultural and domestic sectors may be undertaken, as well as the types of activities that constitute light work. It requests that the Government provide information on the measures taken in this regard.**

**The Committee expresses the hope that the Government will continue to take into consideration the Committee's comments while currently revising the Labour Standards Bill. It further expresses the firm hope that the revised Bill will be adopted in the near future. The Committee once again reminds the Government that it may avail itself of ILO technical assistance in order to bring its legislation into conformity with the Convention.**

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

## Pakistan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2006)**

The Committee notes the observations of the Pakistan Workers Federation (PWF) received on 19 October 2017. *The Committee requests the Government to reply to these comments.*

*Article 2(1) of the Convention. Minimum age for admission to employment or work.* The Committee previously noted the Government's statement that, following the 18th Constitutional Amendment, the power to legislate on labour matters has been transferred to the provinces. The Committee also noted that the four provinces had, in coordination with the Federal Government, drafted a Prohibition of Employment of Children Act, which prohibits the employment of children below the age of 14 years, and that these drafts would soon be introduced to the provincial legislative assemblies. The Committee urged the Government to ensure that the Prohibition of Employment of Children Act is adopted in the four provinces.

The Committee notes with *interest* the Government's information in its report that, the Khyber Pakhtunkhwa (KPK) Prohibition of Employment of Children Act was adopted in 2015 (KPK Act 2015), specifying the minimum age for admission to work as 14 years, while the Punjab Restriction on Employment of Children Ordinance was adopted in 2016 (Punjab Ordinance 2016), specifying the minimum age as 15 years. The Committee further notes that the Islamabad Capital Territory (ICT), as well as Balochistan and Sindh provinces have also drafted legislation containing similar provisions. *Recalling that, at the time of ratification in 2006, Pakistan specified 14 years as the applicable minimum age, the Committee requests that the Government take the necessary measures to ensure that the draft Prohibition of Employment of Children Acts are adopted in the Islamabad Capital Territory, as well as Balochistan and Sindh provinces in the near future. It also requests that the Government provide a copy of the relevant legislation, once adopted.*

*Article 3(1) and (2). Determination of types of hazardous work.* The Committee previously noted that, under the Employment of Children Act 1991, there was no specific age for admission to hazardous work. The Committee also noted the information from ILO-IPEC of October 2012 that, as part of the Combating Abusive Child Labour II Project, preparation of new provincial lists of hazardous child labour would begin. In this regard, the Committee noted the information from the mission report of the tripartite interprovincial workshop, carried out in May 2013 within the ILO technical assistance programme (the Special Programme Account (SPA) project) that the action plans of some of the provinces included undertaking, in 2013, tripartite consultations with a view to revising the hazardous work list.

The Committee notes with *satisfaction* that, the KPK Act 2015 and the Punjab Ordinance 2016 provide for two lists of types of hazardous work prohibited to young persons under 18 years of age, including occupations related to transport by railway, work inside underground mines and aboveground quarries, work with power driven cutting machines, work exposed to dust or poisonous materials, work at oil and gas fields, and so on. These lists were determined in consultation with the representative workers' and employers' organizations and discussed at the level of Provincial Tripartite Consultative Committee. The Committee further notes that, the draft laws from ICT, Balochistan and Sindh also prohibit hazardous work for children below 18 years of age. *The Committee therefore requests that the Government take the necessary measures to ensure that the draft laws prohibiting the employment of persons under 18 years of age in hazardous types of work in ICT, Balochistan and Sindh provinces are adopted in the near future. It also requests that the Government take the necessary measures, after consultation with the organizations of employers and workers concerned, to determine the types of hazardous employment or work prohibited to young persons under 18 years of age in ICT, Balochistan and Sindh, in conformity with Article 3(2) of the Convention.*

*Article 9(1). Penalties and labour inspectorate.* The Committee previously noted the International Trade Union Confederation's (ITUC) indication that persons found guilty of violating child labour legislation were rarely prosecuted and that when prosecution did occur, the fines imposed were usually insignificant. The Committee also noted that the enforcement of child labour legislation was weak due to the lack of inspectors assigned to child labour, lack of training and resources, and corruption, and that the penalties imposed were often too minor to act as a deterrent. The Committee further noted that the provincial labour departments each have training centres for inspectors, and provide training on child labour. Moreover, according to the SPA mission report, the tripartite participants of the workshop indicated that they experienced difficulties in enforcing the legislative provisions relating to child labour, due to, among others, a lack of capacity among labour inspectors, and that there was a need for the more effective application of penalties for child labour related violations.

The Committee notes the Government's information that, according to new laws in KPK and Punjab provinces on the prohibition of employment of children, the maximum fines have been increased from Pakistani rupee (PKR) 20,000 to PKR50,000 (approximately US\$190 to \$475). Moreover, fines provided in the Punjab Prohibition of Child Labour at Brick Kilns Act 2016 range from PKR50,000 to PKR500,000 (approximately \$475 to \$4,750). The Committee further notes the Government's information that the Federal Ministry of Overseas Pakistanis and Human Resource Development (OP&HRD) has worked on a framework document for the revitalization and restructuring of the labour inspection system. Reforms recommended under this framework document are being followed under the Programme of Strengthening Labour Inspection System for Promoting Labour Standards and Ensuring Workplace Compliance in Pakistan, supported by the ILO country office. The Committee also notes that, in Punjab province, provisions related to the labour inspection in the

Punjab Ordinance 2016 replaced those in the Employment of Children Act 1991. The Committee further notes the Government's information regarding Punjab province that, in 2014, 133,973 inspections were conducted, 790 children were detected in child labour, and 536 convictions were handed out, out of 790 prosecutions, involving PKR218,550 fines (approximately \$2,076); while in 2015, 153,418 inspections were conducted, 1,446 children were detected in child labour, and 448 convictions were handed out, out of 1,446 prosecutions, involving PKR505,600 fines (approximately \$4,805). Moreover, the Committee notes that, in its concluding observations of 11 July 2016, the Committee on the Rights of the Child (CRC) remains concerned about the inadequate number of sufficiently trained inspectors, their vulnerability to corruption and a lack of resources to inspect workplaces (CRC/C/PAK/05, paragraph 71). The Committee notes that the fines assessed do not appear to be sufficiently effective and dissuasive. ***The Committee therefore requests that the Government continue its efforts to strengthen the capacity of the labour inspectorate, and to continue providing information on the number and nature of violations relating to the employment of children detected by the labour inspectorate. The Committee also requests that the Government continue to strengthen its measures to ensure that persons who violate the abovementioned laws are prosecuted and that sufficiently effective and dissuasive penalties are imposed. The Committee requests the Government to provide information on the implementation of these laws in practice, including the number and nature of violations detected and the penalties imposed in this regard.***

*Application of the Convention in practice.* The Committee previously noted that, the second National Child Labour Survey was planned under the Combating Abusive Child Labour II project, in consultation with the Federal Bureau of Statistics. However, the Committee noted the information, from ILO-IPEC of September 2012, that the survey was subsequently cancelled.

The Committee notes the Government's indication that, with the assistance of UNICEF, child labour surveys are being organized in the provinces. The Punjab Government has started its provincial level survey in collaboration with the Board of Statistics, which will be completed by May 2017. Sindh and KPK provinces also included relevant schemes in their respective annual development programs for conducting child labour surveys during the current fiscal year (2016–17). Balochistan is planning to hold a child labour survey in the coming years. Moreover, the International Labour Standards Unit in the Ministry of OP&HRD created the first detailed national profile on child labour and children in employment using the ILO Global Estimation Methodology on Child Labour, and published the report "Understanding Children's Work in Pakistan: An Insight into Child Labour Data (2010–15) and Legal Framework" with the support of the ILO. According to the report, the number of children of 10–17 years of age engaged in child labour has decreased from 4.04 million in 2010–11 to 3.70 million in 2014–15, of which 2.067 million (55 per cent) are in the 10–14 years range. While taking due note of the decrease in the number of children engaged in child labour, the Committee must express its **concern** at the high number of children still working under the minimum age. ***The Committee therefore urges the Government to strengthen its efforts to prevent and eliminate child labour, including through continued cooperation with the ILO, and to provide information on the results achieved. The Committee also requests the Government to provide the results of the child labour surveys at the provincial levels once available.***

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

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)***

The Committee notes the observations of the Pakistan Workers Federation (PWF) received on 19 October 2017. ***The Committee requests the Government to provide its reply to these observations.***

*Article 3(a) of the Convention. Worst forms of child labour. Compulsory recruitment of children for use in armed conflict.* The Committee previously noted that terrorist activity had been minimized following military operations in the affected regions of the country, and that the recruitment of children for terrorist activities had been reduced. The Government also indicated that an awareness-raising campaign was carried out by law enforcement agencies in cooperation with religious leaders on the offence of recruiting children for armed conflicts, with positive results. The Committee also noted from the information contained in the report of the UN Secretary-General on children and armed conflict that, in 2011, 11 incidents were reported of children being used by armed groups to carry out suicide attacks, involving ten boys, some as young as 13, and one 9-year-old girl. This report also indicated that a rehabilitation and reintegration programme in Malakland for children taken into custody by the Pakistan security forces due to alleged association with armed groups, received 29 new cases in 2011.

The Committee notes the Government's information that in its report it is making utmost efforts to prevent the use of children by terrorist and extremist groups. Punitive action is being taken against those who use children for terrorist activities. The Government also indicates, in its written replies to the Committee on the Rights of the Child (CRC) of 11 April 2016, that Pakistan's armed forces do not deploy persons under the age of 18, and that terrorists cannot legally recruit any person including children because formation of private military organisations is prohibited under article 256 of the Constitution and the Private Military Organisations (Abolition and Prohibition) Act of 1973 (CRC/C/PAK/Q/5/Add.1, paragraph 65). However, the Committee notes that the CRC expressed its grave concern in its concluding observations of 11 July 2016 that children continue to be targeted for recruitment and training by armed groups for military activities, which include suicide bombing and detonating landmines, and are transferred to the front lines of conflict areas. The CRC states that insufficient measures have been taken by the Government to prevent such recruitment (CRC/C/PAK/CO/5, paragraph 69). The Committee must express its **deep concern** at the situation of children affected by the armed groups in

Pakistan. *The Committee therefore urges the Government to intensify its efforts to put an end, in practice, to the forced or compulsory recruitment of children for use by armed groups, and proceed with the full and immediate demobilization of all these children. It urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive penalties are imposed.*

*Articles 3(a) and 7(2)(b). Sale and trafficking of children and direct assistance to victims.* The Committee previously noted that pursuant to the Prevention and Control of Human Trafficking Ordinance of 2002 (PCHTO), human trafficking for the purpose of sexual exploitation, slavery or forced labour is prohibited. The Committee noted the Government's statement that the Federal Investigating Agency (FIA) in Pakistan is responsible for the implementation of the PCHTO. The Committee also took note of the Anti-Human Trafficking report provided with the Government's report, which indicated that until 31 October 2009, 235 child victims of trafficking had been identified (95 boys and 140 girls). This report indicated that 21,735 cases against traffickers were registered, which resulted in 3,371 convictions, as well as 147 disciplinary cases against law enforcement officers for complicity.

The Committee notes the Government's information that the Criminal Law (Second Amendment) Act 2016 has been adopted, which adds section 369A to the Penal Code providing for imprisonment of five to seven years, or a fine from 500,000 Pakistani Rupee (PKR) to PKR700,000, or both, for the trafficking of human beings. The Committee notes, from the Government's written replies to the list of issues in relation to the fifth periodic report to the CRC of 11 April 2016, that during the reporting period (from 2009 onwards), 1,679 persons allegedly involved in human trafficking cases were arrested by the FIA (CRC/C/PAK/Q/5/Add.1, paragraph 62). However, the Committee notes that the CRC expressed its concern, in its concluding observations on the fifth periodic report of 11 July 2016, that Pakistan remains a significant source, destination and transit country for children trafficked for purposes of commercial sexual exploitation and forced or bonded labour (CRC/C/PAK/CO/5, paragraph 75). The Committee also notes from the Global Report on Trafficking in Persons 2016 of UNODC that, from January to September 2015, 287 child victims of internal trafficking were identified; while in 2013 and 2014, 402 and 571 child victims were identified respectively. However, no child victims were identified in cross-border trafficking offences from January 2012 to September 2015. *The Committee therefore urges the Government to strengthen its efforts to combat and eliminate trafficking in children, and to provide information on the measures taken in this regard, particularly the number of persons convicted and sentenced for cases involving victims under the age of 18. The Committee also urges the Government to take the necessary measures to strengthen the procedures for identifying child victims of trafficking and to ensure that these children are referred to the appropriate services for the purposes of rehabilitation and social integration. It further requests the Government to provide information on the concrete measures taken in this regard and the results achieved, including the number of children reached through the measures taken.*

*Articles 3(d) and 4(1). Hazardous work. With regard to the adoption of the list of hazardous work, the Committee refers to its detailed comments under the Minimum Age Convention, 1973 (No. 138).*

*Article 7(2)(a) and (e). Effective and time-bound measures. Preventing the engagement of children in the worst forms of child labour. Access to free basic education and special situation of girls.* The Committee previously noted that, under the Education Sector Reform Programme, the provinces were taking measures, including to increase the availability of schools in rural areas, to provide free text books, recruit teachers and focus on female education. However, the Committee also noted the information in the report prepared by the Office of the High Commissioner for Human Rights for the Universal Periodic Review of 13 August 2012, that as many as 7.3 million primary school-age children (57 per cent of which were girls) were out of school (A/HRC/WG.6/14/PAK/2, paragraph 57). It also noted the information contained in the United Nations Educational, Scientific and Cultural Organization (UNESCO) 2012 "Global Monitoring Report – Education for All" that, while Pakistan had the second largest number of out-of-school children in the world, it continued to reduce education spending.

The Committee notes the absence of information on this topic in the Government's report. However, the Committee notes that the CRC, in its concluding observations of 11 July 2016 (CRC/C/PAK/CO/5, paragraph 61), expressed its concern at the absence of a compulsory education law in Khyber Pakhtunkhwa (KPK) province and the Gilgit-Baltistan autonomous administrative territory, and the poor enforcement of education laws in provinces where they do exist. Moreover, a large number of children (47.3 per cent of all children aged 5 to 16 years) were not enrolled in formal education, of which the majority have never attended school. In addition, the dropout rate for girls is reportedly as high as 50 per cent in Balochistan and KPK and 77 per cent in the Federal Administered Tribal Areas. The Committee must express its *deep concern* at the low enrolment rates in formal education and the high drop-out rates among girls. *Considering that free basic education is one of the most effective means of preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to redouble its efforts to improve access to free basic education for all children, taking into account the special situation of girls. The Committee requests the Government to provide information on the concrete measures taken in this regard, and to provide statistical information on the results achieved, particularly with regard to increasing school enrolment rates and reducing school drop-out rates and the number of out-of-school children. To the extent possible, this information should be disaggregated by age and gender.*

*Application of the Convention in practice.* Following its previous comments, the Committee notes the Government's statement that ILO-IPEC undertook consultations with the Federal Bureau of Statistics with a view to carrying out a National Survey on Child Labour. However, the Committee notes the information from ILO-IPEC of September 2012 according to which agreement on a methodology for the survey was not possible, and that the survey was therefore cancelled.

The Committee notes the Government's indication that, with the assistance of UNICEF, child labour surveys are being organized in provinces. The Committee also notes that, the International Labour Standards Unit in the Ministry of Overseas Pakistanis and Human Resources Development and created the first detailed national profile on child labour and children in employment, based on the available information from the Labour Force Survey, published from 2010 onwards, using the ILO Global Estimation Methodology on Child Labour. According to this national profile, 3.7 million children are engaged in child labour, of which 2.067 million (55 per cent) are in the 10–14 year age group, while the remaining 1.641 million (45 per cent) are in the 15–17 year age group and engaged in hazardous work. Among the children aged 15–17 years engaged in hazardous work, 89 per cent (1.47 million) are boys. The Committee expresses its *deep concern* at the high number of children engaged in hazardous work in Pakistan. **The Committee therefore urges the Government to intensify its efforts to eliminate the worst forms of child labour, particularly hazardous types of work, and requests it to continue providing information on any progress made in this respect and on the results achieved. The Committee also requests the Government to continue to provide information regarding the child labour surveys organized in the provinces, as well as any additional available information on the nature, extent and trends of the worst forms of child labour, and the number of children protected by measures giving effect to the Convention. To the extent possible, all information provided should be disaggregated by age and gender, and nature of the work performed.**

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

## Papua New Guinea

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Article 1 of the Convention. National plan of action and application of the Convention in practice.* The Committee previously noted the comments made by the International Trade Union Confederation (ITUC) that child labour occurred in rural areas, usually in subsistence agriculture, and in urban areas in street vending, tourism and entertainment. It noted that Papua New Guinea was one of the 11 countries that participated in the 2008–12 ILO-IPEC *Time-bound Programme* entitled "Tackling child labour through education" (TACKLE project) which aimed at contributing to the fight against child labour.

The Committee notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that within the framework of the TACKLE project, a rapid assessment was carried out in Port Moresby targeting children working on the streets and those involved in commercial sexual exploitation. The Committee notes the Government's statement that the findings of the rapid assessment conducted in Port Moresby were alarming and that it is believed that a similar child labour situation is occurring in other regions of the country. The rapid assessment findings indicate that children as young as 5 and 6 years of age are working on the streets and about 68 per cent of them worked under hazardous conditions. About 47 per cent of the street children between 12 and 14 years of age have never been to school and a further 34 per cent had dropped out of school. The Committee expresses its *deep concern* at the situation of children under 16 years of age who are compelled to work in Papua New Guinea. **The Committee, therefore, urges the Government to strengthen its efforts to improve the situation of children working under the age of 16 years and to ensure the effective elimination of child labour. Noting that there is no concrete or reliable data reflecting the real situation of children in the rest of the country, the Committee urges the Government to undertake a national child labour survey to ensure that sufficient up-to-date data on the situation of working children in Papua New Guinea is available.**

*Article 2(1). Minimum age for admission to employment.* The Committee had previously noted that, although the Government of Papua New Guinea had declared 16 years to be the minimum age for admission to employment or work, section 103(4) of the Employment Act permits a child of 14 or 15 years to be employed during school hours if the employer is satisfied that the child is no longer attending school. It also noted that, by virtue of sections 6 and 7 of the Minimum Age (Sea) Act, 1972, the minimum age to perform work on board ships is 15 years and 14 years, respectively.

The Committee notes the Government's information that the Australian Assistance for International Development through its Facilities and Advisory Services in close consultation with the ILO-IPEC and the Department of Labour and Industrial Relations has undertaken a review of the Employment Act and that the amendment process is ongoing. It also notes the Government's indication that this process will also address the issue related to the minimum age stipulated under the Minimum Age (Sea) Act, 1972. **Noting that the Government has been referring to the review of the Employment Act and the Minimum Age (Sea) Act for a number of years, the Committee once again urges the Government to take the necessary measures to ensure that the proposed amendments are adopted in the near future. In this regard, it expresses the hope that the amended provisions will be in conformity with Article 2(1) of the Convention.**

*Article 2(3). Age of completion of compulsory education.* The Committee previously noted that education is neither universal nor compulsory in Papua New Guinea, and that the law does not specify a legal age for entering school or an age at which children are permitted to leave school. It noted that the Education Department has developed a ten-year National Education Plan for 2005–15 (NEP) to enable more children to be in school. However, the Committee observed that the NEP seemed intended to make only three years of basic education compulsory up to the age of 9. Moreover, the Committee noted that according to the ITUC, the gross primary enrolment rate was 55.2 per cent, and only 68 per cent of these children remain at school up to the age of 10, while only less than 20 per cent of the country's children attend secondary school.

The Committee notes from the Government's report under Convention No. 182 that the NEP is being supported by donor agencies to implement programmes focusing on formal education and non-formal education (NFE), including assistance from the Asian Development Bank and the European Union in order to extend the NFE to the needy and the disadvantaged. The Committee notes, however, that according to the findings of the rapid assessment conducted in Port Moresby during 2010–11, although educational reforms are in place, 92.2 per cent of those children who enrolled in grade 3 would drop out along the way. The Committee expresses its *deep concern* at the significant number of children under the minimum age of admission to work who are not attending school. In this regard, the Committee must emphasize the desirability of linking the age of completion of compulsory schooling with the minimum age for admission to work, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). If compulsory schooling comes to an end before young persons are legally entitled to work, there may arise a vacuum which opens the door to the economic exploitation of children (see General Survey of 2012 on the fundamental Conventions concerning rights at work, paragraph 371). *Therefore, considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures, particularly within the framework of the NEP, to provide for compulsory education for boys and girls up to the minimum age for admission to employment of 16 years. The Committee requests the Government to provide information on the progress made in this regard.*

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work.* In its previous comments, the Committee noted that while certain provisions of the national legislation prohibit hazardous work for children under the age of 16 years, there exist no provisions protecting children between the ages of 16–18 years from hazardous work. The Committee also noted the absence of any list of types of hazardous work prohibited to children under the age of 18 years.

The Committee notes from the Government's report that the ongoing legislative review of the Employment Act will ensure the compliance of the provisions of the Convention related to hazardous work. *The Committee expresses the firm hope that the amendments to the Employment Act, which will include a prohibition on hazardous work for children under the age of 18 years as well as a determination of types of hazardous work prohibited to such children, will be adopted in the near future. It requests the Government to provide information on any progress made in this regard.*

*Article 3(3). Admission to types of hazardous work from the age of 16 years.* The Committee previously noted that the conditions of work for young people would be examined through the ongoing Employment Act review and that the legislation relating to occupational safety and health shall also be reviewed in a way to ensure that hazardous work does not affect the health and safety of young workers. *The Committee once again expresses the strong hope that the review of the Employment Act and of the legislation pertaining to occupational safety and health will be completed as soon as possible. It also hopes that the amendments made to the legislation will include provisions requiring that young persons between 16 and 18 years of age who are authorized to perform hazardous types of work receive adequate specific instruction or vocational training in the relevant branch of activity. It requests the Government to provide information on the progress made in this regard in its next report.*

*Article 9(3). Registers of employment.* The Committee previously noted that the Employment Act does not contain any provision requiring the employer to keep registers and documents of people under the age of 18 working for them. It also noted that section 5 of the Minimum Age (Sea) Act provides for registers to be kept by people having command or charge of a vessel, which contains particulars such as the full name, date of birth, and the terms and conditions of service of each person under 16 years of age employed on board the vessel. The Committee requested the Government to take the necessary measures to ensure that, in conformity with *Article 9(3)* of the Convention, employers are obliged to keep registers that shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom they employ or who work for them and who are less than 18 years of age.

The Committee once again notes the Government's information that this issue will be addressed within the review of the Employment Act. *The Committee expresses the firm hope that the Government will take the necessary measures, without delay, to ensure that employers are obliged to keep register of all persons below the age of 18 years who work for them and to provide information with regard to the progress made in ensuring that the Employment Act and the Minimum Age (Sea) Act are in conformity with Article 9(3) of the Convention.*

*The Committee urges the Government to strengthen its efforts to ensure that, during its review of the Employment Act and the Minimum Age (Sea) Act, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention. The Committee requests the Government to provide information on any progress made in the review of these Acts in its next report and invites the Government to consider seeking technical assistance from the ILO.*

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

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee previously noted that women and children were trafficked within the country for the purpose of commercial sexual exploitation and domestic servitude. It requested the Government to take the necessary measures, as a matter of urgency, to adopt legislation prohibiting the sale and trafficking of both boys and girls under 18, for the purposes of labour and sexual exploitation.

The Committee notes the Government's indication that it is addressing this issue through the adoption of the People Smuggling and Trafficking in Persons Bill which would amend the Criminal Code to include a provision prohibiting human trafficking, including children under the age of 18 years, for labour and sexual exploitation. However, the Committee notes that according to a survey conducted in 2012 within the framework of the Combating Trafficking in Human Beings in Papua New Guinea project implemented by the International Organization for Migration (IOM), trafficking for the purpose of forced labour, sexual exploitation and domestic servitude, including child trafficking, is occurring at a high rate in the country. Female children were indicated as over twice as vulnerable to becoming victims of trafficking than male children. The Committee further notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 30 July 2010, expressed concern that there are no specific laws addressing trafficking-related problems and about cross-country trafficking, which involves commercial sex as well as exploitative labour (CEDAW/C/PNG/CO/3, paragraph 31). *The Committee, therefore, urges the Government to take the necessary measures to ensure the adoption of the People Smuggling*

**and Trafficking in Persons Bill, without delay, and to ensure that thorough investigations and robust prosecutions of persons who commit the offence of trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee requests the Government to supply a copy of the People Smuggling and Trafficking in Persons Bill, once it has been adopted.**

*Article 7(2). Effective and time-bound measures. Clause (e). Taking into account the special situation of girls.* 1. *Child victims of prostitution.* The Committee previously noted the Government's indication that the number of girls (some as young as 13) who engaged in prostitution as a means of survival was a growing problem in both urban and rural areas. Moreover, the Committee also noted that the laws prohibiting prostitution were selectively or rarely enforced, even in cases involving children.

The Committee notes the absence of information in the Government's report on the measures taken or envisaged to combat the commercial sexual exploitation of children. The Committee notes that, according to the findings of the rapid assessment conducted in Port Moresby during 2010–11, there are an increasing number of girls involved in commercial sexual exploitation. The most common age at which girls engaged in prostitution is 15 years (34 per cent), while 41 per cent of the children are sex workers before the age of 15 years. The survey report further indicated that girls as young as 10 years are also involved in sex work. The Committee once again expresses its *deep concern* at the prevalence of the commercial sexual exploitation of children in Papua New Guinea. **The Committee therefore urges the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children, particularly girls under 18 years of age from prostitution, and provide for their rehabilitation and social integration.**

2. *"Adopted" children.* The Committee previously noted the observation of the International Trade Union Confederation (ITUC) that indebted families sometimes pay off their dues by sending children – usually girls – to their lenders for domestic servitude. The ITUC indicated that "adopted" children usually worked long hours, lacked freedom of mobility or medical treatment, and did not attend school. The Committee also noted the Government's indication that the practice of "adoption" is a cultural tradition in Papua New Guinea. The Committee observed that these "adopted" girls often fall prey to exploitation, as it was difficult to monitor their working conditions, and it requested the Government to provide information on the measures taken to protect these children.

In this regard, the Committee noted the Government's reference to the Lukautim Pikinini Act of 2009 which provided for the protection of children with special needs. According to the Lukautim Pikinini Act, a person who has a child with special needs in his/her care but who is unable to provide the services required for the upbringing of a child may enter into a special needs agreement with the Family Support Service. Under these agreements, financial assistance may be provided. Pursuant to section 41 of the Lukautim Pikinini Act, the definition of a "child with special needs" includes children who have been orphaned, displaced or traumatized as a result of natural disasters, conflicts or separation, or children who are vulnerable to violence, abuse or exploitation.

The Committee notes that the Government has not provided any additional information on this issue. The Committee expresses its *concern* at the situation of "adopted" children under 18 years of age who are compelled to work under conditions similar to bonded labour or under hazardous conditions. **It once again requests the Government to take immediate and effective measures to ensure, in law and in practice, that "adopted" children under 18 years of age may not be exploited under conditions equivalent to bonded labour or under hazardous conditions, taking account of the special situation of girls. The Committee also requests the Government to provide information on the number of "adopted" children engaged in exploitative and hazardous work who have benefited from special needs agreements.**

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

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

## Paraguay

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1966)**

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1966)**

In order to provide an overview of all the issues related to the application of the ratified Conventions on the medical examination of young persons, the Committee considers it appropriate to examine Conventions Nos 77 and 78 in a single comment.

*Article 4(1) and (2) of Conventions Nos 77 and 78. Medical re-examination for fitness for employment until the age of 21 years.* In its previous comments, the Committee requested the Government to take the necessary measures to bring the national legislation into conformity with *Article 4* of the Conventions.

In its report, the Government provides a considerable amount of information on the measures taken to reinforce the protection of children who work, namely through the Comprehensive National Health Plan for Children (2016–21) and the adoption of Resolution C.A. No. 099-022/16, approving the regulations making the employer responsible for obtaining a medical certificate. While noting this information, the Committee notes with *regret* that the Government still has not provided information on any measures taken to bring the legislation into conformity with the Convention. It is therefore bound to recall once again that section 121(b) of the Labour Code makes the employment of minors under *18 years of age* subject to a number of conditions, including the obligation to present an annual physical and mental fitness certificate, issued by the competent authority. However, according to *Article 4* of the Conventions, in occupations which involve high health risks, a medical examination and re-examinations for fitness for employment shall be required until at least the age of *21 years*. It also recalls the need to determine the occupations or categories of occupations for which this examination shall be required. **The Committee urges the Government to take the necessary measures to supplement its legislation in**

*order to establish, for occupations involving high health risks, the compulsory nature of the examination for fitness for employment and of re-examinations until at least the age of 21 years. It also requests the Government to determine the occupations or categories of occupations for which such an examination is required.*

*Article 6(1) of Convention Nos 77 and 78. Measures for vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to work.* The Committee takes due note of Act No. 5155/13 establishing the new Ministry of Labour, Employment and Social Security (MTESS). The Committee notes the Government's indication that section 4(12) of the Act provides that the MTESS is the competent authority to develop and implement the special scheme applicable to workers with disabilities. The Committee also notes that, according to the Government, the National Vocational Promotion Service (SNPP) and the National Vocational Training and Further Training System (SINAFOCAL) provides free courses on access to employment for persons with disabilities. Furthermore, the Committee notes the many legal instruments which provide for the inclusion of persons with disabilities in the labour market, and particularly Act No. 3585/08 which establishes the requirement to integrate persons with disabilities into public institutions. Lastly, the Committee notes with *interest* the institutional cooperation agreement concluded in 2014 between the MTESS, the SNPP, the SINAFOCAL and the General Directorate for Employment, with the aim of achieving the effective inclusion of persons with disabilities in the labour market through training and integration.

*Application of the Conventions in practice.* The Committee notes the Government's indication that the National Secretariat for the Rights of Persons with Disabilities has carried out numerous activities, including the collection of statistical data. However, the Committee notes that the Government has not provided any details on the statistics to which it refers. *As, under section 55 of the Code of Children and Young Persons, the Municipal Council for the Rights of Children and Young Persons (CODENI) is required to produce a specific register of young workers, the Committee requests the Government to provide statistical data on the number of children and young persons working in the industrial sector, the number of those who have undergone the medical examinations provided for under the Conventions, information on the infringements reported by the labour inspectorate in this area and the penalties imposed, as well as any other information concerning the application of the Conventions in practice.*

### **Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) (ratification: 1966)**

### **Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1966)**

In order to provide an overview of the issues relating to the application of the ratified Conventions on the night work of young persons, the Committee considers it appropriate to examine Conventions Nos 79 and 90 in a single comment.

*Article 3 of Convention No. 79 and Article 2 of Convention No. 90. Period during which it is forbidden to work at night.* In its previous comments, the Committee requested the Government to amend section 58 of the Children's and Young Persons' Code, which prohibits night work for young persons aged 14 to 18 years for a period of *ten hours* including the interval between 8 p.m. and 6 a.m, in order to bring it into conformity with the Conventions and with section 2 of Decree No. 4951 of 22 March 2005 which considers night work carried out between 7 p.m. and 7 a.m, a period of *12 hours*, as hazardous work prohibited for young persons under 18 years of age. The Government indicated that the National Secretariat for Children and Young Persons had submitted a formal request to the Ministry of Labour, Employment and Social Security (MTESS) to begin the adoption procedure of the amendments to section 58 of the Children's and Young Persons' Code. The secretariat indicated its willingness to carry out the necessary actions together with the MTESS to this end. The Committee also noted that a tripartite Memorandum of Understanding had been signed between the tripartite constituents and the Office under the terms of which the tripartite advisory council of the MTESS would cooperate with the ILO to examine and, if necessary, submit to Congress the necessary legislative amendments to bring the legislation into conformity with the ratified ILO Conventions.

The Committee notes with *interest* that, according to the Government's report, preliminary draft legislation amending section 58 of the Children's and Young Persons' Code has been formulated and was presented to the executive authorities in 2016. The Government indicates that the preliminary draft legislation is currently before the Committee on Constitutional Affairs, Legislation and Codification, for review. *The Committee requests the Government to take the necessary measures to adopt, as soon as possible, the draft legislation amending section 58 of the Code of Children and Young Persons, so as to prohibit night work for children for a period of 12 consecutive hours.*

## **Portugal**

### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6) (ratification: 1932)**

The Committee notes the observations of the General Workers' Union (UGT), received on 28 August 2017, and of the General Confederation of Portuguese Workers (CGTP-IN), received on 1 September 2017.

*Article 2(2) of the Convention. Exceptions to the prohibition of night work by young persons.* In its previous comments, the Committee noted that the Labour Code of 2003 had been revised and the night work of young persons under 18 years of age is now covered by section 76 of the Legislative Decree No. 7/2009 (Labour Code of 2009). The Committee noted that under section 76(1) a young person of less than 16 years of age cannot work between 8 p.m. and 7 a.m., and under section 76(2) a young person of 16 years or more cannot work between 10 p.m. and 7 a.m. except in the conditions determined by the following paragraphs. The Committee therefore noted that section 76(3) of the Labour Code allows young persons of 16 years or more to perform night work: (i) in sectors of activity determined by a collective agreement, except during the period between midnight and 5 a.m.; or (ii) in cultural, artistic, sporting or advertising activities, where there are objective grounds for doing so and on condition that he/she is granted a compensatory period of rest equal to the number of hours worked. The Committee therefore requested the Government to take the necessary measures to specify the activities in which night work may be authorized for children over 16 years of age.

The Committee takes notes of the observations of the CGTP-IN according to which the Government has not amended the legislation, as per the Committee's request. The Committee once again notes the allegations made by the CGTP-IN reiterating its previous comments that the national legislation does not expressly state the sectors of activity in which night work is authorized for young persons over 16 years of age. The CGTP-IN further alleges that this task is left to collective bargaining which could lead to a generalization or widespread habit in practice, which is not permitted by the Convention. The Committee also notes the UGT's statement that in the past years the participation of minors under 18 years of age in artistic activities has seen a growth in recent years and that it is important that such work is performed in a way that will not affect their physical and psychological development.

The Committee notes the Government's indication in its report that the regulations governing the protection of minors performing hazardous work should be taken into account. With regard to the work of children in artistic performances, the Committee refers to the Minimum Age Convention, 1973 (No. 138), ratified by Portugal in 1998, Article 8 of which authorizes the undertaking of such performances under certain conditions. With regard to section 76(3) of the Labour Code which authorizes the night work of young persons between the ages of 16 and 18 years in sectors to be determined by collective agreement, the Committee recalls once again that according to *Article 2(1)* of the Convention, young persons under 18 years of age shall not be employed during the night in any industrial undertaking, other than an undertaking in which only members of the same family are employed, and in the cases listed in *Article 2(2)* of the Convention, that is, in work which, by reason of the nature of the process, is required to be carried on continuously day and night. *The Committee therefore requests the Government to take the necessary measures to specify the activities in which night work may be authorized for children over 16 years of age as per section 76(3)(a) of the Labour Code of 2009, so as to be in conformity with Article 2(1) and (2) of the Convention.*

## Saint Vincent and the Grenadines

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 3(d) and 4(1). Hazardous work.* The Committee previously noted that the Employment of Women, Young Persons and Children Act (EWYPC Act), did not contain a general prohibition on the employment of children below 18 years of age in hazardous work, other than the prohibition on night work in any industrial undertaking (section 3(2)) nor a determination of hazardous types of work prohibited to children under 18 years of age.

The Committee notes the Government's indication that consultation with stakeholders to address the issues related to hazardous work by children will be commenced shortly and a draft report will be prepared by the end of 2013. *The Committee expresses the firm hope that consultations with the stakeholders including the social partners will be held in the near future and legislation relating to the prohibition on hazardous work by children under 18 years of age as well as a regulation determining the types of hazardous work prohibited to children under the age of 18 years will be adopted soon. The Committee requests the Government to provide information on any developments made in this regard.*

*Article 7(1). Penalties.* *The Committee requests the Government to provide information on the application in practice of the sanctions established in the Trafficking Act of 2011 for the offences related to the sale and trafficking of children and for the use, procuring and offering of children for prostitution and child pornography.*

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

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

## Samoa

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2008)**

*Article 2(3) of the Convention. Age of completion of compulsory education.* In its previous comments, the Committee noted that section 20 of the Education Act 2009 prohibits arranging for a compulsory school-aged child to engage in street trading or to carry out other work of any kind during school hours. However, the Committee noted that

pursuant to section 2 of the Education Act 2009, a compulsory school-aged child is defined as a person between 5 years and 14 years of age, who has not completed the eighth year of school. The Committee noted the Government's statement that the provisions to raise the age of completion of compulsory schooling to 15 years will be incorporated in the Education Act after consultations with the Attorney General's Office.

The Committee notes the Government's information in its report that the Ministry of Education, Sports and Culture has started consulting with the Office of the Attorney General on the drafting of the revised Education Amendment Bill 2016 in order to incorporate a change in the age of completion of compulsory schooling. ***The Committee expresses the firm hope that the Education Amendment Bill, raising the age of completion of compulsory schooling in line with the minimum age for admission to work of 15 years, will be finalized and adopted soon. It requests that the Government provide information on any progress made in this regard.***

*Article 3(2). Determination of types of hazardous work.* In its previous comments, the Committee noted that according to section 83(2)(b) of the Labour and Employment Relations Act 2013 (LER Act of 2013), regulations may be made to determine unhealthy, dangerous or onerous work, as well as the minimum ages of entry into employment in such work.

The Committee notes the Government's statement that there is a draft list determining the types of hazardous work prohibited to children, which will be submitted to the Samoa National Tripartite Forum for endorsement. ***The Committee expresses the firm hope that the list of types of hazardous work prohibited for children under 18 years of age will be finalized and adopted in the near future. It requests that the Government provide information on any progress made in this regard.***

*Article 7(1) and (3). Minimum age for admission to light work and determination of types of light work activities.* In its previous comments, the Committee noted that section 32(1) of the Labour and Employment Act 1972 permits children under the age of 15 to engage in safe and light work suited to his or her capacity. It also noted that the Education Act 2009 appears to allow children of compulsory school age to be engaged in some types of work which do not occur during school hours and which do not prevent or interfere with the child's attendance at school, active participation in school activities or the child's educational development. The Committee observed, however, that there appeared to be no lower minimum age for engagement in such light work activities. The Committee noted the Government's indication that the Ministry of Labour would take the necessary measures to address this issue as well, as to determine the types of light work activities permitted to children between the ages of 13 and 15 years.

The Committee notes the Government's information that under section 51(1) of the new LER Act of 2013, "a person must not employ a child under the age of 15 years in a place of employment except in safe and light work suited to his or her capacity and subject to such conditions as may be determined by the Chief Executive Officer of the Ministry of Labour". The Committee, however, notes once again that this provision does not set a lower minimum age for engagement in such light work activities. It also notes the Government's statement that a list of light work is currently being reviewed for children under the age of 15 in accordance with section 51 of the LER Act of 2013 and will be submitted to the Samoa National Tripartite Forum for endorsement. ***The Committee urges the Government to take the necessary measures to bring the national laws and regulations in line with the Convention by permitting employment in light work only by young people who have reached the age of 13 years, pursuant to Article 7(1) of the Convention. It requests that the Government provide information on any progress made in this regard. It also expresses the firm hope that the Government will take the necessary measures to regulate light work activities in compliance with Article 7(3) of the Convention.***

*Article 9(3). Keeping of registers.* In its previous comments, the Committee noted that section 83(2)(a) of the LER Act of 2013 provides that regulations may be made requiring employers to keep records of persons employed in their undertakings, and prescribing the form and contents of such records. Moreover, the Committee noted that section 16 of the LER Act of 2013 states that the Chief Executive Officer of the Ministry of Labour shall have the power to require an employer to keep and produce books, registers or other documents relating to the employment of his/her employees.

The Committee notes the Government's indication that the Ministry of Commerce, Industry and Labour sent a letter of intent to remind the employers of their obligations and to obtain information on the employment of children under the age of 18 years. The Committee, however, reminds the Government that, in accordance with *Article 9(3)* of the Convention, national laws or regulations of the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer of persons whom they employ and who are less than 18 years of age. ***The Committee therefore urges the Government to take effective measures pursuant to section 83(2)(a) of the LER Act of 2013, to adopt regulations requiring employers to keep registers of all persons employed under the age of 18 years, in conformity with Article 9(3) of the Convention, and to provide the information obtained by the employers further to the letter of intent and the regulations further adopted.***

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2008)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution, pornography or pornographic performances.* The Committee previously observed that neither the Crimes Ordinance 1961 nor the Indecent Publications Ordinance 1960 appeared to specifically address the issue of production of

indecent materials, or the use, procuring or offering of children under the age of 18 years for the production of such materials. The Committee noted that according to section 82 of the Crimes Act 2013, any person who sells, delivers, exhibits, prints, publishes, creates, produces or distributes any indecent material that depicts a child engaged in sexually explicit conduct shall be punished. The Committee noted, however, that for the purposes of this section a child is defined as a person under the age of 16 years. The Committee reminded the Government that by virtue of *Article 3(b)* of the Convention, the use, procuring or offering of children under 18 years of age for pornography or pornographic performances shall be prohibited.

The Committee notes the Government's information in its report that the Ministry of Police stated that national legislation should be reviewed so that the national definition of a child complies with the Convention. ***The Committee, therefore, once again urges the Government to take the necessary measures to ensure that the use, procuring or offering of children between the ages of 16 and 18 for the production of indecent materials is also effectively prohibited.***

*Article 4(1). Determination of hazardous types of work. With regard to the adoption of a list determining the types of hazardous work prohibited for persons under 18 years of age, the Committee refers the Government to its detailed comments under the Minimum Age Convention, 1973 (No. 138).*

*Article 7(2). Effective and time-bound measures. Clause (d). Reaching out to children at special risk. Children working as street vendors.* The Committee noted that section 20 of the Education Act 2009 specifically prohibits the engagement of compulsory school-aged children in street trading during school hours, and that it provides for the appointment of school attendance officers, responsible for identifying children who are out of school during school hours, and returning them to school. However, the Committee noted the statement in the National Policy for Children, that despite measures to increase school attendance, child vendors continue to be seen operating day and night around central Apia. The Committee noted the Government's information that children working as street vendors are those sent by their parents after school to sell goods for their own livelihoods. The Government further indicated that the school attendance officer identifies children of compulsory school age who are not in school during school hours, while the police is the authority in charge of identifying and removing child vendors from the street after school hours.

The Committee notes the Government's information that the issue of children working as street vendors is dealt with in the Community Sector Plan 2016–21 (CSP). According to the Government, the CSP includes the promotion of a positive parenting programme as a "prevention approach". In this regard, a Child Protection Officer was recruited within the Ministry of Women, Community and Social Development (MWCSD) to spearhead the implementation of the Convention on the Rights of the Child through effective planning, monitoring and evaluation. The Government also indicates that the MWCSD conducted a needs assessment with ten families with a child working as a street vendor. It reports that the CSP provides a platform for the development of an intervention plan which will respond to the needs of vulnerable children and their families. It is intended that this pilot group will be extended to the national level and become a component of the wider CSP. The Government further reports that the existing social protection programmes of the MWCSD can be expanded and tailored to children at risk, including child vendors, to offer basic survival skills and conduct awareness-raising programmes.

The Committee also notes from the Government's report under Convention No. 138 that the majority of cases regarding child vendors in the streets are mainly dealt with by the Community Engagement Unit in collaboration with the Ministry of Education, Sports and Culture (MESC) and the MWCSD. The Government further indicates that the MESC conducts the process and then sends the approval to the police to go ahead with the investigation of the parents involved. Upon completion of the investigation, the parents may be charged. The Government also states that the police patrols the streets once a week to monitor the presence of children. The Committee notes that, according to the 2017 ILO "Report of the Rapid Assessment of Children working on the streets in Apia, Samoa: A pilot study", the majority of the 106 children interviewed started working on the streets due to the fact that the family needed income (page 36). Children, as young as 7 years of age, sell food, homemade juice and razor blades. They are involved in hazardous work, working in dangerous environments, working long hours (over five to 12 hours a day), and under harsh weather conditions, to sell their products. The majority of the children work for their own family and are not aware of the social support services available to them. The Committee must express its **concern** that children continue to work as street vendors, often in hazardous conditions. ***Considering that children working on the streets are particularly vulnerable to the worst forms of child labour, the Committee requests the Government to take the necessary measures to identify and protect children engaged in street vending from the worst forms of child labour. It also requests the Government to provide information on the number of child street vendors who have been removed from the worst forms of child labour and provided with assistance and socially integrated.***

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

## Sierra Leone

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2011)***

*Article 2(1) of the Convention. Scope of application.* The Committee previously noted that, according to section 129 of the Child Rights Act of 2007 (Child Rights Act), the provisions related to the employment of children apply

to employment in the formal and informal economies. However, according to sections 52 and 53 of the Employers and Employed Act of 1960, children under the age of 15 years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof or on any vessel, other than an undertaking or vessel in which only members of the same family are employed.

The Committee notes the absence of information in the Government's report in this regard. ***Noting the discrepancies on the application of the minimum age provisions, the Committee once again requests the Government to take the necessary measures to harmonize the provisions of the Employers and Employed Act with the Child Rights Act, so as to ensure that children working in all branches of economic activity, including family undertakings, also benefit from the protection laid down in the Convention.***

*Article 3(2). Determination of the types of hazardous work.* The Committee previously noted that, according to section 128(3) of the Child Rights Act, hazardous types of work prohibited to children under 18 years of age include: going to sea; mining and quarrying; portage of heavy loads; manufacturing industries where chemicals are produced or used; work in places where machines are used; and work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour. It also noted that section 126 of the Child Rights Act and section 48 of the Employers and Employed Act prohibit night work of persons under the age of 18 years. The Committee further noted the Government's indication that the Ministry of Labour and Social Security (MLSS) had developed a list of types of hazardous work prohibited to children under 18 years of age after consultations with the social partners, child protection agencies and civil society organizations. This list of hazardous types of work had been validated and was awaiting Cabinet approval as a *Statutory Supplementary Instrument*.

The Committee notes the Government's information in its report that the list of hazardous types of work is still awaiting Cabinet approval. ***The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure that the list of types of hazardous work prohibited to children under the age of 18 years is adopted in the near future. It requests that the Government provide information on any progress made in this regard.***

*Article 3(3). Admission to hazardous types of work from the age of 16 years.* The Committee previously noted that section 54(2) of the Employers and Employed Act permits underground work in mines of male persons who have attained the age of 16 years with a medical certificate attesting fitness for such work. However, there appear to be no provisions which establish the requirement to ascertain that young persons between the ages of 16 and 18 years engaged in hazardous work receive adequate specific instruction or vocational training in the relevant branch of activity as required by *Article 3(3)* of the Convention.

The Committee notes the absence of information on this point. The Committee once again reminds the Government that according to *Article 3(3)* of the Convention, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years, on condition that the young persons receive adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee therefore once again requests that the Government take the necessary measures to ensure compliance with the conditions set out in Article 3(3) of the Convention.***

*Labour inspectorate.* The Committee previously noted that according to the provisions of section 132 of the Child Rights Act, a district labour officer shall carry out an inquiry he may consider necessary in order to satisfy himself that the provisions of Part VIII of the Act dealing with the employment of children and young persons in the formal economy are being strictly observed. For the purposes of this section, any person may be interrogated by the district labour officer. Furthermore, if a district labour officer is reasonably satisfied that the provisions of this Part are not being complied with, they shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender. The Committee also noted that similar provisions are laid down under section 133 of the Child Rights Act with regard to the enforcement of the provisions related to the employment of children in the informal economy by the District Council. The Committee also noted the Government's information that the Child Labour Unit established within the MLSS was also mandated to monitor child labour in workplaces. The Government's report further indicated that the inspections carried out in the formal sector revealed the non-existence of child labour; however, only limited inspections were carried out in the informal economy and therefore no relevant data on child labour in this sector was available. Moreover, the Government stated in its report that the labour inspectors, investigators and other key enforcement agencies were still operating on old legislation and that they lacked proper training on child labour monitoring.

The Committee notes that, in its comments of 2013 under the Labour Inspection Convention, 1947 (No. 81), the Committee had noted that the labour inspectorate in Sierra Leone was practically inoperative. ***The Committee therefore once again requests that the Government take the necessary measures to strengthen the functioning of the labour inspectorate to ensure the effective monitoring of children working in the formal and informal economy. The Committee also once again requests the Government to provide information on the functioning of the Child Labour Units with regard to the child labour inspections carried out and on the number and nature of violations detected.***

*Application of the Convention in practice.* The Committee previously noted that the data released by the ILO on 12 June 2008 indicated that more than half of all the children between the ages of 7 and 14 years were child labourers. While noting the measures taken by the Government, the Committee expressed its concern at the high number of children below the legal minimum age who were engaged in child labour in Sierra Leone. The Committee also noted from the

project report of the ILO–IPEC project entitled “Tackle Child Labour through Education” (TACKLE project) that the TACKLE project and the Statistical Information and Monitoring Programme on Child Labour (SIMPOC) conducted a National Child Labour Survey in 2010–11 in Sierra Leone, the report of which had not yet been published.

The Committee notes that the Government provided results of the National Child Labour Survey 2011 in its written replies to the list of issues in relation to the combined third to fifth periodic reports to the Committee on the Rights of the Child (CRC) of September 2016 (CRC/C/SLE/Q/3-5/Add.1, Annex II), according to which, 45.9 per cent of children aged 5–17 year of age were involved in child labour. Particularly, 31 per cent of children between 5 and 14 years of age were engaged in child labour, while 22 per cent of children between 5 and 17 years of age were involved in hazardous work. The Committee further notes that, according to the State of the World’s Children 2014 (UNICEF), more than a quarter (26 per cent) of children aged 5–17 years were involved in hazardous work. The Committee expresses its *deep concern* at the large number of children involved in child labour and hazardous work. ***It urges the Government to pursue its efforts to prevent and eliminate child labour within the country. It also requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons.***

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

## Sri Lanka

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Article 2(2) of the Convention. Raising the minimum age for admission to employment or work.* The Committee previously noted the Government’s information that the Ministry of Labour Relations and Foreign Employment was considering the possibility of raising the age for admission to employment to 16 years and that legislative amendments in this regard had been submitted to the Attorney General for approval, which would thereupon be submitted to Parliament for adoption.

The Committee notes the Government’s indication in its report that the Ministry of Labour and Trade Union Relations (MoLTUR) is currently in the process of amending relevant labour laws such as the Employment of Women, Young Persons and Children Act No. 47 of 1956, the Shop and Office Employees Act No. 15 of 1954, the Factory Ordinance No. 45 of 1942, and the Employees’ Provident Fund Act No. 15 of 1958, in order to raise the minimum age for admission to work or employment to 16 years. The Government states that the process of amending the Employment of Women, Young Persons and Children Act has already started. ***The Committee trusts that the amendments with regard to raising the minimum age for admission to employment to 16 years will be adopted in the near future. In this regard, the Committee would like to draw the Government’s attention to the provisions of Article 2(2) of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office in case any amendments to the national legislation raising the minimum age for admission to employment or work to 16 years have been made.***

*Article 2(3). Compulsory education.* The Committee previously noted the Government’s information that the Cabinet of Ministers had approved the memorandum submitted by the Ministry of Education on raising the upper age limit of compulsory education from 14 years to 16 years, and that the amendments in this regard had been submitted to the Attorney General for approval.

The Committee notes with *interest* the Government’s indication that the Compulsory Attendance of Children at School Regulations No. 1 of 2015 was adopted and provides for compulsory education from 5 to 16 years of age. However, the Committee 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 (see General Survey on the fundamental Conventions, 2012, paragraph 370). ***The Committee therefore urges the Government to continue its efforts to raise the general minimum age in order to link it with the age of completion of compulsory schooling, in conformity with the Convention.***

*Application of the Convention in practice and labour inspectorate.* The Committee previously noted the Government’s statement that the Department of Labour was making every effort to enforce the law against child labour and that no incidence of child labour had been observed in the formal economy. The Committee further noted the Government’s indication that it envisaged that one of its districts, Ratnapura, would become a child labour free zone by 2015, and that the Government was trying to expand this concept into other districts as well. According to the Government’s report, the main aspect of this concept is that it has the support of all government programmes related to education, vocational training, poverty alleviation and other social welfare schemes, as well as support of the private sector and non-governmental organizations, in eliminating child labour. The Committee noted, however, the comments made by the National Trade Union Federation (NTUF) that the number of children engaged in employment was much higher than indicated by the Government as most of the children are employed as domestic workers where outsiders have no access.

The Committee notes that according to the 2015–16 Child Activity Survey, the total child population aged between 5 and 17 years involved in child labour has decreased from 2.5 per cent in 2009 to 2.3 per cent, of which 0.9 per cent are engaged in hazardous work (down from 1.5 per cent in 2009). The Committee notes that 66.7 per cent of working children are boys, 33.3 per cent are girls and 73 per cent are in the age group 15–17 years. Around 59.3 per cent are engaged in unpaid family work (compared with 80.8 per cent in 2009); 36.2 per cent are employees and 4.6 per cent are self-employed.

The Committee further notes the Government's statement that the implementation of the child labour free zone in the district of Ratnapura was successful and that it is now being replicated in other districts. One of the most important outcomes of the programme is that it establishes a system whereby immediate action is taken once child labour incidents are reported. The Government indicates that the detection of child labour is included in the general inspections of the labour inspectorate. Accordingly, 147 cases were received, out of which 54 cases were dismissed and 93 cases are being investigated further. There have been three cases filed with the Magistrate Court and one case has been concluded with penalties imposed. The Government also indicates that a National Policy on the Elimination of Child Labour has been prepared and is awaiting adoption by the Cabinet of Ministers. Finally, the Country Level Engagement and Assistance to Reduce Child Labour (CLEAR) is currently being implemented with ILO support. ***Taking due note of the decrease in child labour in the country, the Committee encourages the Government to pursue its efforts to ensure the progressive abolition of child labour and to provide information on the results achieved through the implementation of the child labour free zone in all its districts, the National Policy on the Elimination of Child Labour and the CLEAR engagement. Noting that child labour in the country mostly occurs in the informal sector, the Committee requests that the Government take effective measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children working in the informal sector, including domestic workers. The Committee also requests that the Government continue providing information on the manner in which the Convention is applied in practice, including information from the labour inspectorate on the number and nature of infringements reported, violations detected and penalties applied.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously noted that sections 360A, 360B and 288A of the Penal Code, as amended, prohibited a wide range of activities associated with prostitution, including the use, procuring or offering of minors under 18 years of age for prostitution. The Committee also noted the high incidence of exploitation of approximately 40,000 children in prostitution, that no comprehensive data was available on child sexual exploitation, and that no central body was established to monitor the investigation and prosecution of child sexual exploitation cases. In an effort to address these issues, the Government mentioned that several initiatives and measures had been taken against the sexual exploitation of children and that it had established a women and children police desk at the district level consisting of police officers specially trained to deal with the incidence of sexual exploitation of children.

The Committee notes from the Government's statement, in its report, that in 2015, there were nine reported cases of commercial sexual exploitation of children and seven convictions, and in 2016, there were four reported cases and one conviction. The Committee notes with **concern** the low number of convictions in light of the high incidence of children in prostitution. ***The Committee therefore urges the Government to strengthen its efforts to ensure that perpetrators are brought to justice and that thorough investigations and robust prosecutions of perpetrators are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to continue providing information with regard to the number of prosecutions, convictions and penalties imposed on offenders in cases related to the commercial sexual exploitation of children.***

*Clause (d) and Article 4(1). Hazardous work.* The Government previously stated that around 65,000 labour inspections were carried out annually and that no incidents of hazardous work by children had been detected in the formal economy. The Committee noted, however, from a Child Activity Survey, that out of the total child population of 107,259 reported to be in child labour, 63,916 children (1.5 per cent) between the ages of 5 to 17 years were engaged in hazardous work.

The Committee notes the Government's indication that to protect children from hazardous forms of child labour, advocacy activities have been directed towards parents and employers. It also notes that according to the 2015–16 Child Activity Survey, 2.3 per cent of children aged 5–17 years are engaged in child labour, of which 0.9 per cent in hazardous work (down from 1.5 per cent in 2008). However, the Government indicates that labour inspections have been planned and undertaken in work places where hazardous jobs are carried out (388 inspections in 2016), and that there were no findings of child labour in the formal economy resulting from these inspections. The Government further indicates that a committee has been appointed by the Commissioner General of Labour to revise the list of hazardous work according to international standards. It also notes the ILO Decent Work Country Programme with Sri Lanka (DWCP 2013–17) which includes among other priorities, the reduction of the worst forms of child labour (outcome 3.2). In the framework of the DWCP 2013–17, the Ministry of Women and Child Affairs collaborated with the ILO Decent Work Country Team to deliver five awareness-raising programmes on hazardous forms of child labour, targeting school children, principals, teachers and parents. ***The Committee requests the Government to pursue its efforts to ensure the protection of children from hazardous work, including in the informal economy, and to provide information on the measures taken in this***

*regard and on the results achieved. It also requests the Government to provide information on the adoption of the new list of hazardous work and to provide a copy once it has been adopted.*

*Article 6. Programmes of action to eliminate the worst forms of child labour. Commercial sexual exploitation of children.* The Committee previously noted that Sri Lanka remained a common destination for child-sex tourism, with a high number of boys being sexually exploited by tourists. The Committee noted that, according to the document entitled “Sri Lanka’s Roadmap 2016 on the worst forms of child labour: From commitment to action”, one of the strategies of the 2016 Roadmap was to promote child-safe tourism. The document also indicated that Sri Lanka’s Ten-Year Horizon Development Framework 2006–16 (*Mahinda Chintana*), which is vigorously tackling many of the root causes of child labour, aims to strengthen security against tourism-related crimes, including combating child-sex tourism through strict police vigilance and awareness-raising programmes. However, the Committee noted from the same document that the “beach boy” phenomenon along with the issue of paedophilia has been known for a long time along the south-western coastal belt of Sri Lanka. The Committee further noted the comments made by the National Trade Union Federation that the commercial sexual exploitation of children takes place mainly in seaside tourist resorts and the hidden nature of these offences curtails complaints or facts from coming to light.

The Committee notes the Government’s statement that awareness-raising programmes are delivered to the public and tourists in tourist areas to promote child-safe tourism. In this regard, 360 hotel staff members have received child protection awareness training. *The Committee encourages the Government to strengthen its efforts to combat child-sex tourism. Noting the lack of information provided in this regard, the Committee once again requests the Government to provide information on the implementation of the strategies of the 2016 Roadmap in promoting child-safe tourism as well as the measures taken within the framework of the Mahinda Chintana in combating child-sex tourism.*

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

## Sudan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2003)**

*Article 3(2) of the Convention. Determination of hazardous work.* In its previous comments, the Committee noted that within the framework of the ILO–IPEC project “Tackling child labour through education” (TACKLE Project), the Child Labour Unit was taking the lead on the development of the list of types of hazardous work. In January 2012, the National Steering Committee had endorsed a list of hazardous activities and the list was awaiting ministerial decree.

The Committee notes the Government’s indication in its report that a copy of the list of hazardous activities will be sent to the Committee as soon as it is adopted. The Committee recalls that, pursuant to *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. *Noting that the Government has been referring to the adoption of the list of hazardous activities since 2006, the Committee urges the Government to take the necessary steps without delay to ensure the adoption, in the very near future, of legal provisions determining the types of hazardous work to be prohibited for persons under 18 years of age. It also requests that the Government provide a copy of the list, once adopted.*

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). Slavery and practices similar to slavery. 1. Abductions and the exaction of forced labour.* In its early comments, the Committee noted the various legal provisions in Sudan which prohibit the forced labour of children (and abductions for that purpose), including article 30(1) of the Constitution of 2005, section 32 of the Child Act of 2004, and section 312 of the Penal Code. However, the Committee noted the allegations of the International Trade Union Confederation (ITUC) regarding cases of abduction of women and children by the Janjaweed militia. The Committee also noted that with reference to several reports of United Nations bodies, such as the report of the Secretary-General on Children and Armed Conflict, cases of abduction of children with a view to their labour exploitation had been reported in Abyei, Blue Nile and South Kordofan.

The Committee notes the Government’s indication in its report that special courts were set up to eliminate the practice of abduction. Moreover, psychological and social support, education, work opportunities, and skills training were also provided to children who had been abducted. In addition, training was provided to 78 specialists from the Ministries of Social Affairs and of Education, and other partners working on social psychological rehabilitation with the participation of society in the process of reintegration and rehabilitation.

With regard to the penalties imposed on the offenders who abduct children for the exaction of forced labour, the Committee further notes the Government’s indication in its report submitted under the Forced Labour Convention, 1930 (No. 29), that among the prosecutions undertaken by the Special Prosecutor for Darfur, none of the prosecutions were related to cases of abductions for forced labour. The Committee also notes that according to the 2016 report on children and armed conflict of the UN Secretary-General, although impunity for grave violations against children continued to be a concern, there was progress, with arrests being made for sexual violence and the killing and maiming of children. The

Secretary-General called upon the Government to ensure accountability for all grave violations (A/70/836-S/2016/360, paragraph 147). ***The Committee urges the Government to continue to strengthen its efforts to eradicate abductions and the exaction of forced labour from children under 18 years of age, and to provide information on the effective and time-bound measures taken to this end. The Committee also urges the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. Lastly, the Committee requests the Government to indicate whether the Committee for the Eradication of Abduction of Women and Children (CEAWC) – referred to in its previous reports – is still operational, and to provide information on its current activities.***

2. *Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted with concern that children were being recruited and forced to join illegal armed groups or the national armed forces in practice.

The Committee notes the Government's indication that the legislation, including the Child Labour Law, the Police Law, and the Civil Service Law specify that no child under 18 years of age shall be recruited in the army, and that penalties are imposed in cases of recruitment. The Government also indicates that a national campaign for the support of child rights was organized, and carried out by the National Council for Childhood. Several workshops and symposia were held at the national level in addition to the preparation and distribution of awareness-raising and guiding posters in support of the issues of child protection, while paying special attention to the issue of child recruitment in the armed forces. Moreover, the National Council for Childhood, in collaboration with the Child Rights Unit at the Ministry of Defence, carried out a few training courses for officers and other members of the armed forces on children's rights and protection in armed conflict, as well as training courses on children's rights and protection across borders.

However, the Committee notes that in its 2014 concluding observations, the UN Human Rights Committee (HRC) was concerned by reports indicating that children are still being recruited and used in armed conflict, and that efforts at monitoring this practice are insufficient. The HRC also recommended that the country redouble its efforts to detect and eradicate the recruitment and use of child soldiers as well as to ensure their prompt disarmament, demobilization and reintegration. The HRC finally recommended that alleged perpetrators be brought to justice and, if convicted, adequately sanctioned (CCPR/CSDN/CO/4, paragraph 24). Furthermore, the Committee observes that according to the 2016 report on children and armed conflict of the UN Secretary-General (A/70/836-S/2016/360, paragraphs 133, 134, 139 and 146) during the reporting period (January to December 2015), four cases of recruitment and use of children by the Sudanese Armed Forces were documented. Two boys were also recruited by the Liberation Movement-North Sudan (SPLM-N) from refugee settlements in South Sudan, and 28 incidents of killing and maiming were documented, affecting 43 and 38 children, respectively. The abduction of eight children, including five in Abyei was also documented. The children were released and reunited with their families following engagement by the UN. Moreover, the country task force on monitoring and reporting verified the recruitment of four boys by the Sudanese Armed Forces in West Darfur, including one who reportedly participated in fighting along with the Abbas faction of the Justice and Equality Movement (JEM). The UN Secretary-General also stated that, during her visit in March 2016, the Special Representative for Children and Armed Conflict was given access to 21 children detained by the National Intelligence and Security Service since April and August 2015. The children had allegedly been recruited in Southern Kordofan and South Sudan and used in combat in Darfur and South Sudan. The Special Representative advocated further access by the UN to the children and their release and reunification with their families. Lastly, the Special Representative highlighted that the Sudan signed in March 2016 an Action Plan to end and prevent the recruitment and use of children by its security forces. While noting certain measures taken by the Government to raise awareness on the issue of children in armed conflict, the Committee expresses its ***deep concern*** with regard to the persistence of this practice, especially as it leads to other violations of the rights of children, in the form of abductions, murders and maiming. ***In this regard, the Committee urges the Government to take immediate and effective measures, in collaboration with the UN bodies operating in the country, to put a stop in practice to the compulsory recruitment of children for use in armed conflict by armed groups and the armed forces. The Committee requests the Government to take the necessary measures to ensure that the Action Plan to end and prevent the recruitment and use of children in the armed forces, signed in 2016 with the UN is promptly and effectively implemented.***

*Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Child soldiers.* In its previous comments, the Committee noted that the Child Soldier Unit was established in order to improve the situation of children associated with armed forces. Its efforts had resulted in the demobilization and reintegration of a considerable number of children in Sudan. The Unit had established a database of child soldiers, with information relating to their registration, reintegration, and follow-up. The Committee also noted that the Government had been facing certain difficulties regarding the funding of the Child Soldier Unit.

The Committee notes the Government's indication that the Disarmament and Demobilization Commission has adopted the concept of full reintegration of children who were recruited by armed groups and movements, based on societal work. The Commission carried out its work in all regions of the country where there are "vagrant children" in the Blue Nile, Al Qadarif, Kassala, Port Sudan and Al-Junaynah. It consists of providing moral and psychological support as well as raising awareness on the impact of recruitment among children's groups, in addition to providing services to children in conflict areas and emergency situations. In this regard, in 2015, the Minimum Standards on Protection of

Children in Emergency and Crisis Situations were launched. *The Committee urges the Government to continue to take effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration. It also requests the Government to indicate whether the Child Soldier Unit is still functional, and to provide information on its recent activities. Lastly, the Committee requests the Government to supply information on the number of child soldiers removed from armed forces and groups and reintegrated through the actions undertaken by the Disarmament and Demobilization Commission.*

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

## Swaziland

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2002)**

*Article 1 of the Convention. National policy.* The Committee previously noted the allegations made by the Swaziland Federation of Trade Unions (SFTU) that there was no national policy or action programme for the elimination of the worst forms of child labour, and that there was no political will on the part of the Government to address the legislative and policy issues concerning child labour. The Committee noted the Government's indication that the redrafting of the proposed Employment Bill and of the National Action Programme on the Elimination of the Worst Forms of Child Labour (NAP-WFCL) had been finalized by the Labour Advisory Board (LAB) and that both would soon be submitted to Cabinet for adoption and publication.

The Committee notes the Government's indication in its report that the adoption of the NAP-WFCL and of the Employment Bill was delayed from 2013 to 2015 due to the fact that the tripartite structures of the country, including the LAB, were not functioning. In 2015, the tripartite structures were once again established, leading to the adoption of the NAP-WFCL by the LAB. As for the Employment Bill, the Government requested technical assistance from the ILO on the drafting of the Bill before being further processed through the legislative channels. However, the revision of the Employment Act was shelved by the Government due to the fact that other laws needed to be amended as a matter of priority, such as the Public Service Act, Terrorism Act, and Law and Order Act. The Government indicates that once the final review by the consultant is finished, the Employment Bill will be referred to the Attorney General for further and appropriate processing. *Noting that the Government has been referring to the Employment Bill for several years, the Committee urges the Government to take the necessary steps to ensure that it is adopted without delay, taking into consideration the comments made by the Committee, and requests that the Government provide a copy of the enacted Employment Act. The Committee also requests that the Government provide a copy of the NAP-WFCL, as well as information on its impact on the elimination of child labour.*

*Article 2(1). Scope of application. Informal economy, including family undertakings.* The Committee previously observed that, in practice, children appeared to be engaged in child labour in a wide range of activities in the informal economy. Yet, the Committee noted that, pursuant to section 2 of the Employment Act, domestic employment, agricultural undertakings and family undertakings were not included in the definition of "undertaking" and therefore not covered by the minimum age provisions of section 97. While the Committee observed that the draft Employment Bill also exempted family undertakings from the minimum age provisions, it noted the Government's indication that the Employment Bill, once adopted and promulgated, would include all workers, even those working in the informal economy, so as to be in line with the Convention. Moreover, the Committee noted the Government's information that, with technical assistance from the ILO, the Ministry of Labour and Social Security had been training labour inspectors on child labour issues and on how to identify child labour in all sectors of the economy.

The Committee notes the Government's indication that it will continue to adapt and strengthen the labour inspectorate in order to improve its capacity to identify cases of child labour in the informal economy and to ensure the effective application of the Convention. Moreover, the Government indicates that cases of child labour were reported, handled and resolved by the Ministry of Labour and Social Security. The Committee also notes the Government's information that the ILO provided technical assistance to increase the capacity of labour inspectors on matters relating to child labour through trainings which covered approximately 50 per cent of the labour inspectors.

However, the Government indicates that new inspectors have since been employed who also require such training. In addition, the Committee notes the Government's information that due to the low number of labour inspectors, the Labour Inspectorate has not been able to conduct inspections in the informal sector of the economy, where child labour is the most prevalent. The Committee notes that, in its report submitted under the Labour Inspection Convention, 1947 (No. 81), the Government shares statistics on the number of inspections conducted, violations detected and penalties applied in 2016. While the Government does not provide information related to child labour violations, the Committee observes that 2,596 inspections were conducted during which 76 violations were detected, but no penalties were imposed, which means that no penalties were imposed for any violations of the labour law provisions prohibiting child labour.

While taking note of the measures taken by the Government, the Committee must emphasize the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors (see General Survey on the fundamental Conventions, 2012, paragraph 407). *The Committee therefore urges the Government to take the necessary steps to adapt and strengthen the labour inspectorate in order to improve the capacity of labour inspectors and allow them to identify cases of child labour in the informal economy, so as to ensure that the protection*

*afforded by the Convention is effectively applied to all child workers. It requests that the Government provide information on the progress made in this regard.*

*Article 2(3). Age of completion of compulsory education.* The Committee previously noted the Government's indication that it enacted the Free Primary Education Act of 2010, which contains provisions requiring parents to send their children to school until the completion of primary schooling. However, the Committee noted with concern that primary schooling finishes at the age of 12 years, while the minimum age for admission to employment is 15 years in Swaziland.

The Committee notes the Government's indication that it took due note of the Committee's request for extending compulsory education up to the age of 15 years, and that it has made education free for all primary grades. However, the Committee underlines that *Article 2(3)* of the Convention requires that the specified minimum age for admission to employment or work, which is 15 in Swaziland, not be less than the age of *compulsory* schooling. Referring to its 2012 General Survey on the fundamental Conventions (paragraph 369), 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. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee once again urges the Government to take the necessary steps to make education compulsory (and not only free) for students at the primary and lower secondary levels, up until the minimum age for admission to employment, which is 15 years in Swaziland.***

*Article 3(2). Determination of hazardous work.* The Committee noted the Government's statement that upon the adoption of the Employment Bill, measures would be taken in consultation with the social partners to develop a list of types of hazardous work prohibited to children and young persons, as envisaged by section 10(2) of the Employment Bill. The Committee reminded the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous work prohibited to children under 18 years of age shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. The Committee noted the Government's indication that the multi-stakeholder Child Labour Committee initiated talks to determine the list of hazardous work and that this list would be sent to the LAB for consideration before being transmitted to the Minister of Labour and Social Security.

The Committee notes the Government's indication that the adoption of the list of hazardous work now hinges on the process of enacting the Employment Bill, and that it will keep the Committee informed of the developments in this regard. ***The Committee therefore once again requests that the Government take the necessary measures to ensure that the types of hazardous work prohibited to children under 18 years of age are determined and that the list is adopted in very near future. It requests that the Government provide information on the progress made in this regard.***

*Article 7. Light work.* The Committee previously noted that 9.3 per cent of children between the ages of 5 and 14 years were engaged in child labour in Swaziland. The Committee noted that the Employment Bill did not appear to set a minimum age for light work, including work in family undertakings. Noting that national legislation did not regulate light work and that a significant number of children under the minimum age were engaged in child labour, the Committee requested the Government to envisage the possibility of adopting provisions to regulate and determine the light work activities performed by children between 13 and 15 years of age, in accordance with *Article 7* of the Convention.

The Committee notes the Government's information that a provision on light work has been included in the Employment Bill in the part dealing with the prohibition of child labour and employment of young persons. ***The Committee requests that the Government provide information on the progress made in adopting the Employment Bill, including the provisions regulating light work in accordance with Article 7 of the Convention.***

*Application of the Convention in practice.* The Committee previously noted the Government's information that, due to a lack of resources, the labour inspection management system was not operational, and that data was still being compiled manually. However, it noted the Government's indication that the Labour Force Survey was being conducted and that this survey included questions on the employment of children. In addition, the Government indicated that the Central Statistical Office was being assisted by the ILO in order to conduct a fully-fledged survey on child labour.

The Committee notes with **concern** the Government's information that statistics on child labour are not available due to the fact that the 2013–14 Integrated Labour Force Survey did not cover issues related to child employment. It notes the Government's indication that child employment statistics will be included in future surveys. ***The Committee requests that the Government take measures to ensure sufficient updated statistical information on the situation of working children in Swaziland is made available, including for example data on the number of children and young persons below the minimum age who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work.***

## Syrian Arab Republic

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

*Application of the Convention in practice.* The Committee previously noted that the ongoing conflict in the Syrian Arab Republic has had an alarming impact on children. It noted that the number of children affected by armed conflict in the Syrian Arab Republic has more than doubled, going from 2.3 million to 5.5 million, and the number of children displaced inside the Syrian Arab Republic has exceeded 3 million.

The Committee takes note of the Government's information in its report on the provisions of national legislation that give effect to the provisions of the Convention. However, the Committee notes that, according to the 2015 UNICEF report entitled "Small Hands, Heavy Burden: How the Syria Conflict is Driving More Children into the Workforce", four and a half years into the crisis, as a result of the war, many children are involved in economic activities that are mentally, physically or socially dangerous and which limit or deny their basic right to education. The report indicates that there is no shortage of evidence that the crisis is pushing an ever-increasing number of children towards exploitation in the labour market. Some 2.7 million Syrian children are currently out of school, a figure swollen by children who are forced to work instead. Children in the Syrian Arab Republic were contributing to the family income in more than three quarters of households surveyed. According to the report, the Syria crisis has created obstacles to the enforcement of national laws and policies to protect children from child labour, one of the reasons being that there are too few labour inspectors. In addition, there is often a lack of coherence between national authorities, international agencies and civil society organizations over the role of each, leading to a failure in national mechanisms to address child labour.

The Committee notes the Government's information in its 5th periodic report submitted to the Committee on the Rights of the Child published on 10 August 2017 (CRC/C/SYR/5, para. 203), that the Ministry of Social Affairs and Labour (MoSAL), in collaboration with the Syrian Authority for Family and Population Affairs (SAFPA) and in cooperation with other stakeholders, developed a National Plan of Action for the Elimination of the Worst Forms of Child Labour (NPA-WFCL). The Government also indicates that, in collaboration with UNICEF, the SAFPA conducted a survey on the worst forms of child labour in two industrial towns, Hassia in Homs and Haouch el Blas in Damascus.

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee must once again express its *deep concern* at the situation of children in the Syrian Arab Republic who are affected by the armed conflict and driven into child labour, including its worst forms. *The Committee urges the Government to take immediate and effective measures in the framework of the implementation of the NPA-WFCL to improve the situation of children in the Syrian Arab Republic and to protect and prevent them from child labour. It requests the Government to provide information on the results achieved, as well as the results of the surveys conducted in Hassia and Haouch el Blas.*

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict.* The Committee previously noted that the Syrian Arab Republic had adopted a series of legislative reforms such as Law No. 11/2013 which criminalizes all forms of recruitment and the use of children under the age of 18 years by armed forces and armed groups. It noted, however, that numerous armed groups in the Syrian Arab Republic, including the Free Syrian Army affiliated groups (FSA), the Kurdish People Protection Units (YPG), Ahrar al-Sham, Islamic State in Iraq and Sham/the Levant (ISIS/ISIL) and other armed groups were reportedly recruiting and using children for logistics, handling ammunition, manning checkpoints and as combatants.

The Committee notes the Government's indication in its report that armed terrorist groups recruit children and involve them in violence and exploit them sexually. The Committee notes that, according to the report of the Secretary-General on the situation of human rights in the Syrian Arab Republic of 9 June 2016 (A/70/919, paragraphs 50–52), from early 2015, UNICEF verified 46 cases of recruitment (43 boys, one girl, two unknown): 21 were attributed to ISIL, 16 to non-state armed opposition groups, five to armed groups affiliated with the Government, two (including a girl) to YPG, and two to government forces. UNICEF reported that children were increasingly recruited at younger ages (some as young as 7 years old) by non-state armed groups. Children's participation in combat was widespread and some armed opposition groups forced children to carry out grave human rights abuses, including executions and torture, while government forces allegedly submitted children to forced labour or used them as human shields. The Secretary-General also refers to reports from the OHCHR, according to which ISIL publicly announced, on 11 December 2015, the already known existence of a children's section among its ranks, the "Cubs of the Caliphate". The OHCHR also received allegations that ISIL was encouraging children between 10 and 14 years of age to join, and that they were training children in military combat.

The Committee further notes that, according to the report of the Secretary-General on children and armed conflict of 20 April 2016 (2016 report of the Secretary-General on children and armed conflict, A/70/836-S/2016/360, paragraphs 148–163), a total of 362 cases of recruitment and use of children were verified (the Secretary-General indicates that the figures do not reflect the full scale of grave violations committed by all parties to the conflict), and attributed to ISIL (274), the Free Syrian Army and affiliated groups (62), Liwa' al-Tawhid (11), popular committees (five), YPG (four), Ahrar al-Sham (three), the Nusrah Front (two) and the Army of Islam (one). Of the verified cases, 56 per cent involved children under 15 years of age, which represents a significant increase compared with 2014. The Secretary-General further

indicates that the massive recruitment of children by ISIL continued, and that centres in rural Aleppo, Dayr al-Zawr and rural Raqqah existed that provided military training to at least 124 boys between 10 and 15 years of age. Verification of the use of child foreign fighters increased as well, with 18 cases of children as young as 7 years of age. In addition, the recruitment and use of children as young as 9 years of age by the Free Syrian Army was also verified, as well as the recruitment of 11 Syrian refugee children from neighbouring countries by Liwa' al-Tawhid, and the YPG continued to recruit boys and girls as young as 14 years of age for combat roles. Recruitment and use by pro-government groups was also verified, with five cases of boys being recruited by the Popular Committee of Tallkalah (Homs) to work as guards and conduct patrols. In addition, there were allegations of the use of children by government forces to man checkpoints.

The Committee must once again *deeply deplore* the use of children in armed conflict in the Syrian Arab Republic, especially as it entails other violations of the rights of the child, such as abductions, murders and sexual violence. It once again recalls that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee once again strongly urges the Government to take measures, using all available means, to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed forces and groups. The Committee once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Law No. 11 of 2013. It requests the Government to provide information on the number of investigations conducted, prosecutions brought and convictions handed down against such persons.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee previously noted that, with approximately 5,000 schools destroyed in the Syrian Arab Republic, the resulting sharp decline in children's education continued to be a matter of great concern among the population. This report also indicated that more than half of Syrian school-age children, up to 2.4 million, were out of school as a consequence of the occupation, destruction and insecurity of schools.

The Committee notes that, according to the 2016 report of the Secretary-General on children and armed conflict (paragraph 157), the number of schools destroyed, partially damaged, used as shelters for internally displaced persons or rendered otherwise inaccessible has reached 6,500. The report refers to information from the Ministry of Education, according to which 571 students and 419 teachers had been killed in 2015, and from the United Nations that 69 attacks on educational facilities and personnel were verified and attributed to all fronts, which killed and maimed 174 children. The Committee further notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraphs 50–53), a further 400,000 children were at risk of dropping out of school as a direct result of conflict, violence and displacement. While basic education facilities were in place in the displacement centres visited by the Special Rapporteur, such centres, often using school buildings, offer only limited educational facilities.

According to the same report, UNICEF is working with local partners to reach some 3 million children and has implemented an informal education programme to reduce the number of children out of school. The inter-agency initiative "No Lost Generation" is a self-learning programme aimed at reaching 500,000 children who missed out on years of schooling. In areas hosting high numbers of displaced children, UNICEF is also rehabilitating 600 damaged schools and creating 300 prefabricated classrooms to accommodate 300,000 additional children. The Committee further notes that, according to UNICEF's 2016 Annual Report on the Syrian Arab Republic, UNICEF's interventions in education, focusing on quality, access and institutional strengthening, contributed to an increase in school enrolment from 3.24 million children (60 per cent of school-age population) to 3.66 million (68 per cent) between 2014–15 and 2015–16. These efforts also resulted in a decrease in the number of out-of-school children from 2.12 million (40 per cent) in 2014–15 to 1.75 million (32 per cent) in 2015–16.

Nevertheless, the Committee notes that, in his report, the Special Rapporteur on the human rights of internally displaced persons declares that the challenge of providing even basic education access to many internally displaced children is immense and many thousands of children are likely to remain out of education in the foreseeable future (A/HRC/32/35/Add.2, paragraph 53). The Committee is, therefore, once again bound to express its *deep concern* at the large number of children who are deprived of education because of the climate of insecurity prevailing in the country. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to strengthen its efforts and take effective and time-bound measures to improve the functioning of the educational system in the country and to facilitate access to free basic education for all Syrian children, especially in areas affected by armed conflict, and giving particular attention to the situation of girls. It requests the Government to provide information on concrete measures taken in this regard.***

*Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. 1. Children affected by armed conflict.* The

Committee previously noted that the recruitment and use of children in armed conflict in the Syrian Arab Republic had become common and that a great majority of the children recruited are trained, armed and used in combat.

The Committee notes the Government's indication that the competent authorities in the Syrian Arab Republic seek to care for children recruited in armed conflict and to help them return to ordinary life. However, the Committee notes with *deep concern* that the situation in the Syrian Arab Republic has not changed and that not only are there no reports of children having been withdrawn from armed forces and groups in the 2016 report of the Secretary-General on children and armed conflict but that, according to this report, children continue to be recruited and used in armed conflict. ***The Committee, therefore, strongly urges the Government to take effective and time-bound measures to prevent the engagement of children in armed conflict and to rehabilitate and integrate former child combatants. It once again requests the Government to provide information on the measures taken in this regard and on the number of children rehabilitated and socially integrated.***

2. *Sexual slavery.* The Committee previously noted that ISIS abducted hundreds of Yazidi women and girls, most of whom were sold as "war booty" or given as "concubines" to ISIS fighters, and that dozens of girls and women were transported to various locations in the Syrian Arab Republic, including Al Raqqa, Al Hasakah and Dayr az Zawr, where they were kept in sexual slavery.

The Committee notes with *regret* the absence of information in the Government's report on this issue. It notes that, according to the report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 15 June 2016 entitled "They came to destroy: ISIS Crimes Against the Yazidis" (A/HRC/32/CRP.2), ISIS has sought to destroy the Yazidis through such egregious human rights violations as killings, sexual slavery, enslavement, torture and mental harm. The report indicates that over 3,200 women and children are still held by ISIS. Most are in the Syrian Arab Republic where Yazidi girls continue to be sexually enslaved and Yazidi boys indoctrinated, trained and used in hostilities. The report reveals that captured Yazidi women and girls over the age of 9 years are deemed the property of ISIS and are sold in slave markets or, more recently through online auctions, to ISIS fighters. While held by ISIS fighters, these Yazidi women and girls are subjected to brutal sexual violence and regularly forced to work in their houses, in many instances forced to work as domestic servants of the fighter and his family. The Committee *deeply deplores* the fact that Yazidi children continue to be victims of sexual slavery and forced labour. ***While acknowledging the difficult situation prevailing in the country, the Committee strongly urges the Government to take effective and time-bound measures to remove Yazidi children under 18 years of age who are victims of forced labour and sexual exploitation and to ensure their rehabilitation and social integration. It once again requests the Government to provide information on specific measures taken in this regard, and the number of children removed from sexual exploitation and rehabilitated.***

*Clause (d). Identifying and reaching out to children at special risk. Internally displaced children.* The Committee previously noted that, by early 2013, there were 3 million children displaced and in need of assistance inside the Syrian Arab Republic.

The Committee notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraph 67), the extent of the conflict and displacement has had a massive impact on children, many of whom have experienced violence first-hand and/or witnessed extreme violence, including the killing of family members and/or separation from family members. The Special Rapporteur indicates that child protection concerns and issues, including child labour resulting from parents' loss of livelihood, trafficking, sexual and gender-based violence and early and forced marriage, continue to be reported. Children have also been recruited and used by different parties to the conflict, both in combat and support roles. ***Observing with concern that internally displaced children are at an increased risk of being engaged in the worst forms of child labour, the Committee once again strongly urges the Government to take effective and time-bound measures to protect these children from the worst forms of child labour. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

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

## Thailand

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2004)**

*Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice.* The Committee previously noted that child labour was a problem in the country in practice and that, in rural areas, children worked in sugar cane, cassava and corn plantations, as well as in rice paddies. Children were also employed in fisheries, shrimp farms and seafood processing under conditions which are often hazardous. In urban areas, children worked in sectors such as restaurants, markets, street vending, construction and entertainment. The Committee noted the Government's statement that it had continued to implement preventive measures to address child labour, including the establishment of a child labour network, as well as of the National Committee on the Elimination of the Worst Forms of Child Labour chaired by the Prime Minister, aimed at eliminating child labour through efficient policies and measures. However, the Committee noted that the labour inspectorate often failed to detect cases of children involved in hazardous work, despite indications that such cases exist.

The Committee notes that, in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government indicates that the Ministry of Labour, through the Department of Labour Protection and Welfare (DLPW) conducted a number of training sessions to enhance the capacity of labour inspectors. The Government also states that each year a regular plan for labour inspection is established with a focus on child labour in industries such as shrimp processing, sugar cane, and garments as well as small enterprises or clandestine establishments in villages or communities located “faraway”. In addition, the Committee notes that, according to Thailand’s Country Report on Anti-Human Trafficking Response (1 January–31 December 2016), submitted to the United Nations Action for Cooperation against Trafficking in Persons (Thailand’s Anti-Trafficking Country Report), a National Policy and Plan to Eliminate the Worst Forms of Child Labour for 2015–2020 (NPP-WFCL II) outlines ways to effectively and successfully eradicate the worst forms of child labour. In this framework, the Ministry of Labour has begun its collaboration with the ILO and Thailand’s National Statistics Office (NSO) on a 21-month project to conduct Thailand’s National Working Children Survey for 2017. The same report reveals that, according to Ministry of Labour estimates collected in cooperation with the NSO, in December 2015, there was an estimated total of 10.88 million children aged 5–17 years, of which 6.4 per cent were working (692,819) and 2.9 per cent were considered in child labour (approximately 315,520).

However, the Committee notes that Thailand’s Anti-Trafficking Country Report also indicates that during the year 2016, the DPLW identified only 51 cases of child labour, of which 23 cases involved children under 15 years of age and 28 cases involved children between 15 and 18 years of age. Thirteen cases have been prosecuted with fines totalling 582,000 Thai baht (US\$16,629). The Committee observes with *concern* that the number of cases of child labour found by the DPLW is extremely low compared to the number of children considered to be in child labour. *Therefore, while taking due note of the steps taken, the Committee requests that the Government pursue and strengthen its efforts to identify and combat child labour, including through the NPP-WFCL II. It once again requests the Government to continue providing information on the steps taken to strengthen the capacity and expand the reach of the labour inspectorate and of the relevant law enforcement agencies, as well as of the child labour monitoring system in this regard. The Committee also requests the Government to provide information on the number and nature of violations detected and penalties applied in child labour cases, focused on detection in agricultural plantations, fisheries, restaurants, markets, construction sites, and other occupational sectors where large numbers of children are employed. Lastly, the Committee asks that the Government provide the results of the 2017 National Working Children Survey.*

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

## The former Yugoslav Republic of Macedonia

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

*Articles 3(a), 5 and 7(1) of the Convention. Trafficking in children, monitoring mechanisms and penalties.* The Committee notes the Government’s information in its report that, section 12 of the Law on Child Protection (amended in 2013) prohibits the sale and trafficking of children, in addition to the relevant provisions in the Criminal Code. The Committee also notes the Government’s information that, in 2014, 18 perpetrators were accused and convicted of child trafficking, while in 2015, six perpetrators were accused and convicted.

The Committee also notes the Government’s indication that a training for representatives of professional services on the prevention of human trafficking was conducted by the Public Institutions of Social Protection for Children at Risk, involving 14 employees in four institutions. Moreover, another training was conducted for police officers and social workers with 75 participants, focusing on the identification and referral of potential victims of human trafficking. In addition, a training has also been provided to foster families for ten caregivers regarding direct assistance and protection of child trafficking victims. The Committee also notes that the National Commission for Combating Human Trafficking keeps a database on all types of exploitation of victims of human trafficking. In 2015, three victims of human trafficking subjected to sexual and labour exploitation were identified, of which two were children. *The Committee requests the Government to pursue its efforts to combat trafficking in children, and to continue to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied in this regard. It also requests the Government to pursue its efforts to ensure that victims of child trafficking are provided with appropriate protection and services. Lastly, the Committee encourages the Government to continue its efforts to strengthen the capacity of the mechanisms in place to ensure the effective monitoring and identification of child victims of trafficking.*

*Article 3(c). Use, procuring or offering a child for illicit activities, in particular the production and trafficking of drugs.* The Committee previously noted that the Law on the Protection of Children did not penalize adults who use children for the illegal production and trafficking of drugs. The Committee noted the Government’s statement that the relevant governmental institutions were taking the necessary measures to protect children from misuse and other types of abuse with respect to the illicit production and trade of drugs. It requested the Government to take the necessary measures to ensure that the use of a child for illicit activities, particularly the production and trafficking of drugs, is prohibited.

The Committee notes with *satisfaction* that section 12 of the Law on the Protection of Children, which was amended in 2015, prohibits any illicit activities and the use of child labour for the production and trafficking of drugs, and psychotropic substances. *The Committee requests the Government to provide information on the application in practice*

*of section 12 of the Law on the Protection of Children, including the number and nature of infringements, investigations, prosecutions, convictions and sanctions applied.*

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Children in street situations.* The Committee previously noted that, according to data from the Ministry of Labour and Social Policy (MLSP), there were approximately 1,000 children in street situations in the country, 95 per cent of whom were Roma, and that labour exploitation and begging contributed to this phenomenon. The Committee further noted the Government's information on the measures adopted to protect children in street situations, including the expansion of the network of daily centres for street children. The Government also indicated that, in 2012, a national SOS helpline was created in order to receive calls from citizens who want to report on children in street situations.

The Committee notes the Government's information that the problem of children in street situations is becoming more prevalent. The MLSP is responsible for taking measures to reduce the number of street children. To date, the MLSP has opened four day centres for street children in Skopje, Bitola and Prilep, as well as a 24-hour transit centre in Ohrid. Moreover, the MLSP financially supported a day care centre managed by a civil association in Shuto Orizari. The Committee further notes the Government's statement according to which it is often the parents who use their children to beg with them or make their children beg. Thus, the amendments to the Law on Family of 2014 provide that inducing a child to beg or using a child for begging shall be considered as abuse or severe neglect in the performance of parental duties, in which case the Centre of Social Work shall intervene. Depending on the situation, measures may include professional advice, constant supervision, temporary guardianship of the concerned child by the social work centre, and proceedings to withdraw parental rights or to file a criminal complaint before a competent court. ***While taking due note of the measures taken by the Government, the Committee strongly encourages the Government to continue its efforts to protect children in street situations from the worst forms of child labour, and once again requests it to provide information on the number of children removed from the streets and who have benefited from rehabilitation and social integration measures.***

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

## Trinidad and Tobago

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2004)**

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* The Committee previously noted that, pursuant to section 76(1) of the Education Act of 1966, compulsory schooling took place between the ages of 6 and 12 years. The Committee emphasized the desirability of linking the age of completion of compulsory schooling to the age of admission to employment (16 years). The Committee noted the Government's statement that the draft of the Children's Bill included amendments to the Education Act. In this regard, the Committee noted that the draft Children's Bill sought to amend section 76(1) of the Education Act to define the period of compulsory schooling as between the ages of 5 and 16 years. The Committee also noted the Government's indication that the Children's Act, 2012, including this amendment, would only become effective once proclaimed on the date fixed by the President, in accordance with section 1(2) of the Act.

The Committee notes with *satisfaction* that Schedule 3 of the Children's Act, 2012, which was proclaimed on 15 May 2015, has amended section 76(1) of the Education Act so as to raise the age of completion of compulsory education to 16, in line with the age of admission to employment or work. ***The Committee requests that the Government provide information on the application in practice of section 76(1) of the Education Act, including updated statistics on school enrolment rates and drop-out rates of children below the age of 16 years.***

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work. With regard to the list of hazardous types of work prohibited to children under 18 years of age, the Committee refers to its detailed comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).*

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour. Clauses (b) and (c). Use, procuring or offering a child for the production of pornography or for pornographic performances and for illicit activities.* The Committee previously urged the Government to take the necessary measures to ensure that the Children's Act, 2012, was proclaimed in order to prohibit the use, procuring or offering of children under 18 years of age for the production of pornography or for pornographic performances and for the production and trafficking of drugs.

The Committee notes with *satisfaction* that the Children's Act, 2012, was proclaimed on 15 May 2015. Section 40 thereof provides that a person who makes, or permits any child pornography to be made, or publishes, distributes, possesses, purchases or exchanges child pornography, commits an offence and is liable upon conviction to a fine of 30,000 Trinidad and Tobago dollars (TTD) (approximately US\$4,400) and to imprisonment for ten years. Section 37 of the same Act provides that a person who uses a child or causes a child to be used as a courier, in order to sell, buy or deliver a dangerous drug or substance commits an offence and is liable, on summary conviction, to a fine of TTD50,000

(approximately US\$7,400) and imprisonment for ten years, or on conviction on indictment, to a fine of TTD100,000 (approximately US\$14,800) and to imprisonment for 20 years. ***The Committee requests the Government to provide information on the application in practice of sections 37 and 40 of the Children's Act, 2012, including the number of investigations conducted, prosecutions, convictions and penal sanctions applied.***

*Article 4(1). Determination of hazardous work.* The Committee previously noted the Government's statement that work had begun to create a list of hazardous occupations. The Committee noted the Government's statement that a governmental delegation attended the ILO Sub regional Workshop on the Elimination of Hazardous Child Labour for Select Caribbean Countries in October 2011. It noted that the report of this delegation would contain recommendations to assist in the development of a list of occupations deemed hazardous.

The Committee notes the Government's indication in its report that it recognizes that the list of hazardous occupations as outlined in Convention No. 182 requires consultation with its stakeholders, including social partners, in particular in light of the recent proclamation of the Children's Act, 2012. In this regard, it will continue its work on the development of the list of hazardous occupations. ***Recalling that, pursuant to Article 1 of the Convention, each member that ratifies the Convention shall take immediate measures to ensure the prohibition of the worst forms of child labour as a matter of urgency, and noting that work on the list of occupations deemed hazardous to children has been ongoing since 2004, the Committee once again urges the Government to take the necessary measures to ensure the adoption of this list in the very near future, following consultation with the social partners. It once again requests the Government to provide a copy of this list once it has been adopted.***

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

## Tunisia

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)***

*Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic workers.* In its previous comments, the Committee noted that a high number of children are victims of sexual abuse in Tunisia, particularly those engaged in domestic work.

The Committee notes the Government's indication in its report that the study entitled "Monitoring the situation of children and women: Multiple indicator cluster survey", conducted in 2011–12, shows that, among children aged between five and 14 years, 3 per cent are engaged in work, essentially in household work. The prevalence of children engaged in work is higher as they grow older, with 6 per cent of children aged 14 years being engaged in work. The Committee also notes the study entitled "Child domestic workers in Tunisia" (ILO, 2017). According to this study, although the law establishes the minimum age for entry into the labour market at 16 years (section 53 of the Labour Code), many children, and particularly young girls, are economically exploited as domestic workers at ages lower than 16. All of them work without written contracts and have no social coverage. They work around ten hours a day. Daily working hours amount to 12 for nearly 20 per cent of girls and exceed 13 hours for nearly 14 per cent of them. The younger the girls, the more likely they are to be called upon to work for periods exceeding ten hours. One third of girls aged under 12 years and half (52.1 per cent) of those between the ages of 12 and 16 years indicate that they have worked more than ten hours per day, while nearly 75 per cent of girls aged over 16 years indicate that they work less than ten hours a day (page 47). The study emphasizes that the extensive hours of work amounting to the exploitation of child domestic workers, does not constitute a brief episode in their lives. The children interviewed spent more than two years on average with the same employer. In certain cases, the exploitation would last up to eight years (page 48). The study also shows that girl domestic workers are often victims of health problems related to the arduous nature and long hours of work, and highlights the dangers to which children may be exposed in the performance of various household tasks and other types of work performed in the employer's house (page 96). Finally, the study stresses the absence of a clear strategy to combat child domestic work in Tunisia, as well as, the obstacles of a legal nature, essentially related to the access of the places where children work, which impairs their action (page 70).

The Committee expresses ***deep concern*** at the exploitation of children under 18 years of age performing domestic work in Tunisia in hazardous conditions, which could result in situations of forced labour. The Committee draws the Government's attention to the fact that domestic work carried out by children under conditions of forced labour or under particularly arduous and hazardous conditions, is one of the worst forms of child labour under the terms of *Article 3(a)* and *(d)* of the Convention, and shall be eliminated as a matter of urgency. ***In this regard, the Committee urges the Government to take immediate and effective measures to ensure the full protection of children under 18 years of age against exploitation in domestic work under hazardous conditions or conditions amounting to forced labour. It requests the Government to provide information on the specific measures adopted to address the situation of child domestic workers, particularly as a follow-up to the recommendations of the 2017 study referred to above, and the results achieved in this regard.***

The Committee is raising other matters in a request address directly to the Government.

## Turkey

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted the indication of the Confederation of Turkish Trade Unions (TÜRK-İŞ) that child labour in Turkey was found in the urban informal sector, in the domestic service, and in seasonal agricultural work. The Committee also noted that a child labour force survey, which was conducted by the Turkish Statistical Institute in 2012, revealed an increase in the number of children aged 6 to 14 years who are in child labour, and indicated that 2.5 per cent of children between 6 and 14 years of age were found to be engaged in work. The Committee requested that the Government continue to provide statistical information on the number of children under the minimum age engaged in child labour.

The Committee notes the absence of new statistical information in this regard. However, the Committee notes the Government's information in its report that the Time Bound National Policy and Programme Framework for Prevention of Child Labour (2005–15) has ended, and that the Government is working to update it for the second phase. For this purpose, a working group has been created with the participation of related institutions and organizations to update the document and prepare an additional plan of action, and the abovementioned documents were expected to be published in October 2016. The Committee also notes that, the Ministry of Education adopted the Circular No. 2016/5 "Access of Children of Seasonal Agriculture Workers and of Nomadic and Semi-Nomadic Families to Education" in March 2016, according to which follow-up teams are established to find children who could not continue their education and enrol them in school. While taking note of the measures undertaken by the Government, the Committee notes with *concern* the number of children below the minimum age of 15 years engaged in child labour. ***The Committee therefore urges the Government to strengthen its efforts to ensure the elimination of child labour. The Committee also requests that the Government indicate whether the updated Time-Bound National Policy and Programme Framework for Prevention of Child Labour and its action plan have been adopted and published, and provide information on the application of the Circular No. 2016/5 in practice.***

*Article 8. Artistic performances.* The Committee previously noted the Government's statement that in 2012, drafts were developed for the amendment of the Labour Law Act regarding the employment of children below the minimum age in artistic performances, with the contribution of the Trade Union of Performers, the Radio and Television Supreme Counsel, and other relevant institutions and organizations, but that no progress had yet been recorded. The Committee therefore expressed its firm hope that the amendments would be made in conformity with the Convention.

The Committee notes with *satisfaction* that section 71 of the Labour Law was amended by Act No. 6645 of 4 April 2015. According to this amendment, children under 14 years of age may work in art, cultural and advertising activities, without harming their physical, mental, social and moral development or interfering with the continuation of education. Moreover, a written agreement and a separate permit are required for each activity. Section 71 further provides that concerned children shall not work more than five hours per day and 30 hours per week; while for the preschool children and those attending school, the working hours cannot be more than two hours per day and ten hours per week, and must be outside school hours. The Committee also notes that issues regarding the work permit, working and resting hours, working environment and conditions, principles and procedures of payment, and other related issues for children working in these activities, will be determined by age groups and types of activity, for which an implementing regulation will be issued by the Ministry of Labour and Social Security. Moreover, a system is planned regarding the granting of work permits and the tracking of concerned children. ***The Committee therefore requests that the Government provide information on any progress made regarding the adoption of the implementing regulation and the establishment of the monitoring system.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the observation of the Turkish Confederation of Employers' Associations (TİSK) received on 28 October 2016.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted that, according to the indications of the International Trade Union Confederation (ITUC), Turkey is a country of transit and destination for trafficked children, who are forced into prostitution and debt bondage. The Committee noted the Government's information that there were between 50–90 child victims of trafficking in 2010. Sixteen perpetrators responsible for trafficking involving victims under 18 years of age were found guilty and convicted in 2009, and five in 2010. The Committee also noted the Government's statement that between 1 June 2011 and 31 January 2013, 97 foreign nationals were identified as victims of human trafficking, but none were children. The Government also indicated that it was taking measures to combat trafficking within the framework of the Second National Action Plan to Combat Trafficking.

The Committee takes due note of the Government's information in its report that the Regulation to Combat Human Trafficking and to Protect Victims entered into force on 17 March 2016. According to this Regulation, victims shall be deemed as children at least until the examination to ascertain their status as a child is concluded. Moreover, psychologists or social workers shall be present during the interview with child victims in the identification process. Identified child victims are handled by the relevant units of the Ministry of Family and Social Policies. The Regulations also provide for access to education services, as well as a voluntary and safe return programme. The Committee also notes the

Government's information that, from 2014 to the first quarter of 2016, 740 out of 1,056 suspects involved in 238 adjudicated cases related to trafficking in persons were acquitted. ***The Committee therefore urges the Government to take the necessary measures to ensure that those responsible for the trafficking of children under 18 years of age are prosecuted, and that sufficiently effective and dissuasive penalties are applied in practice, and asks the Government to provide statistical information on the number of prosecutions initiated, convictions, and penalties imposed. It also requests the Government to continue its efforts to provide the necessary and appropriate direct assistance to child victims of trafficking, including their rehabilitation and social integration, and to provide information on the results achieved.***

*Articles 3(d) and 4(1). Hazardous work and excluded categories of work.* The Committee previously noted that under section 4 of the Labour Act, several categories of workers are excluded from its scope of application, including workers in businesses with fewer than 50 employees in the agricultural and forestry sector, construction work related to agriculture within the framework of the family economy, and domestic service. The Committee also noted that the Regulation on Principles and Procedures on Employment of Children and Young Persons issued in 2013 (Child Employment Regulation 2013) specified the occupations in which children are allowed to be employed, including ten types of light work, 27 types of work permitted for young persons between the ages of 15 and 18, and an additional 11 types of work permitted for children between the ages of 16 and 18. The Committee further noted the adoption of the Occupational Health and Safety Law (OSH law), which applies to all workers, including those excluded from the Labour Act. Section 10 of the OSH Law provides that, when conducting a risk assessment of a workplace, the situation of young workers shall be considered.

The Committee notes the Government's information that the Child Employment Regulation 2013 was enacted on the basis of section 71 of the Labour Law, and that consequently, it is not applicable to work that is not covered by the Labour Law. The Government also indicates that the OSH Law contains certain exceptions regarding its scope of application, including domestic service and self-employed work. The Committee further notes the Government's indication that the domestic service where children and young persons can be employed is covered by the Code of Obligations No. 6098, of which section 417(2) provides for employers' obligation to ensure occupational health and safety at the workplace, and prohibits psychological and sexual abuse. The Committee also notes, from the observation of the TISK submitted under the Minimum Age Convention, 1973 (No. 138), that according to the Child Labour Survey 2012, the number of children employed in industry dropped considerably, but that there was a sharp increase in the number of those employed in agriculture and services. The Committee recalls from the General Survey of 2012 on the fundamental Conventions (paragraphs 549–557), that children working in certain sectors of the economy, in particular those working in the informal economy, and the domestic and agricultural sectors, constitute high-risk groups who are usually outside the normal reach of labour controls and vulnerable to hazardous working conditions. The Committee reminds the Government that the Convention applies to all children under 18 years of age, without exceptions. ***The Committee therefore urges the Government to take the necessary measures to ensure that all children under 18 years of age are protected from hazardous work, including those working outside a labour relationship or out of the normal reach of labour controls. The Committee requests the Government to provide information on any measures undertaken and the results achieved in this regard.***

*Articles 5 and 7(2). Monitoring mechanisms and effective and time-bound measures. Children working in seasonal hazelnut agriculture.* The Committee previously noted the statement of the Confederation of Turkish Trade Unions (TÜRK-İŞ) that children were involved in hazelnut harvesting in very poor conditions. The Committee also noted the Government's statement that children working in agriculture were one of the target groups of the Time-Bound Programme for the Prevention of Child Labour and that it was implementing an action plan to keep children out of plantations in nut growing provinces. The Committee further noted the Government's collaboration with ILO–IPEC on a project to reduce child labour in seasonal commercial agriculture in hazelnut production in Ordu.

The Committee notes the TISK's information that the Ministry of Education issued the Circular "Access to education for the children of seasonal agricultural workers, migrants and semi-migrant families" in 2016, which provides for concrete measures regarding the provision of education to the children of migrant workers and semi-migrant families engaged in seasonal agricultural work, in order to protect them from child labour.

The Committee notes the Government's information that the Pilot Project on the Prevention of the Worst Forms of Child Labour in Seasonal Hazelnut Agriculture, in collaboration with the ILO, has been extended to 2018, additionally covering Akcakoca and Chilimli in Duzce Province and Hendek in Sakarya province. Another Pilot Project on "Testing United States Department of Agriculture's Application Proposals in Hazelnut Supply in Turkey" is carried out in cooperation with the Ministry of Labour and Social Security (MLSS) and the ILO, among other stakeholders. This Project will be implemented in 1,000 hazelnut fields in the provinces of Ordu, Sakarya and Duzce for 28 months, aiming to prevent child labour in the supply chain. However, the Committee notes the Government's indication that no labour inspection activities covering seasonal agricultural work, in particular the activity of hazelnut picking, was carried out during 2013–16. Referring to the 2012 General Survey (paragraph 556), the Committee recalls the necessity to ensure effective law enforcement, including through the strengthening of labour inspection, where there are children engaged in hazardous work in agriculture. ***The Committee therefore requests the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate in agriculture. The Committee also requests***

*the Government to continue its efforts, through the implementation of effective and time-bound measures, to ensure that children under 18 years of age are not engaged in hazardous work in the agricultural sector, particularly in seasonal agricultural work and the nut harvest, and to provide information on the results achieved.*

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. Syrian refugee children.* The Committee notes, from UNICEF's press release of 19 January 2017, that Turkey hosts the largest number of child refugees worldwide, among which over 40 per cent (380,000) are Syrian refugee children missing out on education. The Committee also notes that, according to the Evaluation Report of UNHCR's Emergency Response to the Influx of Syrian Refugees in Turkey for the period going from January 2014 to June 2015 (Evaluation Report, ES/2016/03), partly due to lack of access to education, one of the most serious protection problems facing Syrian refugee children is child labour. While acknowledging the difficult situation prevailing in the country, the Committee expresses its **concern** at the large number of Syrian refugee children who are deprived of education. **Considering that education is one of the most effective methods of preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to take the necessary measures to facilitate access to free, quality basic education to Syrian refugee children.**

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

## Uganda

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2003)**

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, a total of 2.009 million children aged 5–17 years were in child labour (approximately 16 per cent of all children). Moreover, a total of 507,000 children aged 5–17 years were found in hazardous work (25 per cent of the children in child labour). The Committee also noted that the Government acknowledged the problem of child labour in the country and recognized its dangers. It took due note of the Government's indication that the National Action Plan for the elimination of the worst forms of child labour in Uganda (NAP) was launched in June 2012. This NAP is a strategic framework that will set the stage for the mobilization of policy-makers and for awareness raising at all levels, as well as provide a basis for resource mobilization, reporting, monitoring, and evaluation of performance and progress of the interventions aimed at combating child labour. The Committee requested that the Government provide detailed information on the implementation of the NAP and its impact on the elimination of child labour.

The Committee notes the Government's information in its report that the NAP is in the process of being reviewed by the Government with support from the ILO. It also notes, from the ILO–IPEC field office, that a total of 335 children (156 girls and 179 boys) have been withdrawn from child labour and were given skills and livelihood training. Moreover, the child labour agenda has been promoted through the Education Development Partners Forum, Stop Child Labour Partners Forum and other national forums within the education and social development sectors. The Committee finally notes from the 2016 UNICEF Annual Report on Uganda that 7,226 children aged 5–17 years were withdrawn from child labour (page 28). While noting the measures taken by the Government, the Committee must express its **concern** at the number of children involved in child labour in the country, including in hazardous work. **The Committee once again urges the Government to strengthen its efforts to ensure the effective elimination of child labour, especially in hazardous work. In this regard, it requests that the Government provide detailed information on the implementation of the reviewed NAP, once adopted. It also requests that the Government supply information on the application of the Convention in practice, particularly statistics on the employment of children under 14 years of age.**

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously requested the Government to take the necessary measures to ensure that the procuring or offering of boys under 18 years of age for prostitution is prohibited, to impose criminal responsibility on clients who use boys and girls under 18 years of age for prostitution, and to ensure that boys and girls under 18 years of age who are used, procured or offered for prostitution are treated as victims rather than offenders. The Committee noted that the Director of the Directorate of Public Prosecutions had indicated that efforts were being made to amend the Children's Act of 2000 to fully comply with the Convention on the prohibition of the use, procuring or offering of children for prostitution.

The Committee notes with **satisfaction** that section 8A of the Children's (Amendment) Act of 2016 provides that a person shall not engage a child in any work or trade that exposes the child to activities of a sexual nature, whether remunerated or not. It notes that the perpetrator is liable to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.

*Clause (d). Hazardous types of work. Children working in mines.* The Committee observes that, according to the UNICEF Situation analysis of 2015, the Karamoja region has a high incidence of child labour in hazardous mining

conditions (page 13). The Committee also observes, from the UNICEF Annual Report of 2016, that 344 girls and 720 boys were removed from the worst forms of child labour, such as mining, as a result of the support of the Ministry of Gender, Labour and Social Development to the strategic plan for the national child helpline. Moreover, the Committee notes that section 8 of the Children's (Amendment) Act of 2016 prohibits hazardous work, and that the list of hazardous occupations and activities in which the employment of children is not permitted (first schedule of the Employment of Children Regulations of 2012) includes the prohibition of children working in mining. The Committee notes with *concern* the situation of children working in mines under particularly hazardous conditions. ***The Committee urges the Government to take the necessary measures to ensure the effective application of the Children's (Amendment) Act of 2016 and of the Employment of Children Regulations of 2012, so as to prevent children under 18 years of age from working in mines, and to provide the necessary and appropriate direct assistance for their removal.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk.* 1. *Orphans and vulnerable children.* The Committee previously noted the Government's information that a range of factors has contributed to the problem of child labour, such as orphanhood arising from the HIV/AIDS pandemic. The Committee noted that orphans and vulnerable children (OVCs) in Uganda were recognized in both the Policy on orphans and other vulnerable children and the National Strategic Plan on OVCs. The Committee also noted that the policies and activities of the National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2013–17 (NAP) include orphans and HIV/AIDS affected persons in its target groups. However, noting with concern the large number of children orphaned as a result of HIV/AIDS, the Committee urged the Government to intensify its efforts to ensure that such children are protected from the worst forms of child labour.

The Committee notes the absence of information on this point in the Government's report. The Committee however notes that, according to a report by the Uganda AIDS Commission, entitled: "The Uganda HIV and AIDS country progress report: July 2015–June 2016", approximately 160,000 OVCs received social support services and a mapping of OVC actors was conducted, among other achievements. The Committee also notes that the Second National Development Plan 2015/16–2019/20 outlines two programmes to support OVCs: the SUNRISE–OVC (Strengthening the Ugandan National Response for Implementation of Services for OVCs), and the SCORE (Strengthening Community OVC Response). While taking due note of the strategic plans developed by the Government and the decrease in the number of OVCs, the Committee notes with *concern* that there are still approximately 660,000 HIV/AIDS orphans in Uganda, according to UNAIDS estimates for 2015. ***Recalling that children orphaned as a result of HIV/AIDS and other vulnerable children are at particular risk of becoming involved in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children from the worst forms of child labour. It requests the Government once again to provide information on specific measures taken in this respect, particularly in the framework of the Policy on orphans and other vulnerable children, the National Strategic Plan on OVCs, the SUNRISE–OVC and the SCORE, and the results achieved.***

2. *Child domestic workers.* The Committee previously noted that the list of hazardous occupations and activities prohibits the engagement of children under 18 years of age in several activities and hazardous tasks in the sector of domestic work. However, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, approximately 51,063 children, that is 10.07 per cent of the number of children aged 5–17 years engaged in hazardous work in Uganda, are domestic housekeepers, cleaners and helpers. In this regard, the Committee observed that domestic workers form a group targeted by the NAP, and requested the Government to provide information on the impact of the NAP on the protection of child domestic workers.

The Committee notes the absence of information from the Government in this regard. ***Recalling that children in domestic work are particularly vulnerable to the worst forms of child labour, including hazardous work, the Committee once again requests the Government to provide information on the impact of the NAP on the protection of child domestic workers, particularly the number of child domestic workers engaged in hazardous work who have benefited from initiatives taken in this regard.***

3. *Refugee children.* The Committee observes that, according to the UNICEF Uganda situation report of 31 May 2017, there are over 730,000 refugee children in Uganda, among more than 1.2 million refugees. The Committee also observes from the joint Updated regional framework for the protection of South Sudanese and Sudanese refugee children (July 2015–June 2017), developed by UNHCR, UNICEF and NGOs, that South Sudanese and Sudanese refugee children are subjected to child labour in Uganda (page 5). The Committee finally notes that a Uganda Solidarity Summit on Refugees took place in Kampala in June 2017 to showcase the Uganda model of refugee protection and management, to highlight the emergency and long-term needs of the refugees and to mobilize resources. ***While acknowledging the difficult refugee situation prevailing in the country and the efforts provided by the Government, the Committee strongly urges the Government to take effective and time-bound measures as a matter of urgency to specifically protect refugee children from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard.***

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

## Bolivarian Republic of Venezuela

### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6)** (ratification: 1933)

The Committee notes the joint observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 18 September 2017.

*Articles 2 and 12 of the Convention. Prohibition of night work by young persons in industrial undertakings and legislation.* The Committee previously noted that section 257 of the Basic Labour Act of 1997 provided that the working day for young persons under 18 years of age must fall between 6 a.m. and 7 p.m. Section 257 also provided for exceptions on special grounds to the prohibition of night work by young persons, when deemed appropriate by the bodies responsible for the supervision of minors, in cooperation with the labour inspectorate. The Committee subsequently noted the adoption of the Basic Labour Act No. 6076 of 2012, section 32 of which establishes a general prohibition of child labour for children under 14 years of age, except for artistic and cultural performances after authorization by the authority responsible for the protection of minors. Section 32 also provides that the work of minors is governed by the Basic Act on the protection of children and young persons of 1998. However, the Committee noted with concern that the new Basic Labour Act of 2012 no longer contains a provision prohibiting night work by young persons, unlike the previous Act. Moreover, the Committee observed that the Basic Act on the protection of children and young persons of 1998 no longer contains any provisions on the night work of young persons. The Committee therefore requested the Government to take the necessary measures to bring the legislation into compliance with the Convention.

The Committee notes the joint observations of the UNETE, CTV, CGT and CODESA that the Government has not taken any measures to bring its legislation into compliance with the Convention, despite the fact that many children work in the streets at all hours of the day and night.

The Committee notes the Government's indication that it does not consider it necessary to amend the legislation as, under article 23 of the Constitution, international treaties have the force of law in the internal legal system of the country. The Committee once again recalls that *Article 2(1)* of the Convention prohibits the employment during the night of young persons under 18 years of age in any industrial undertaking other than an undertaking in which only members of the same family are employed, except in the cases provided for in *Article 2(2)*. Therefore, the Committee notes with **deep concern** that the Government has not taken any measures to prohibit night work by young persons in industrial undertakings. In addition, it recalls that, under *Article 12* of the Convention, each Member that ratifies the Convention agrees to take such action as may be necessary to make its provisions effective. **The Committee therefore urges the Government to take the necessary measures to bring the national legislation into compliance with the Convention without delay by reintroducing a provision prohibiting the night work of young persons under 18 years of age, in order to ensure the effective implementation of the provisions of the Convention. If such a provision were to include special grounds on which exceptions to the prohibition of night work by young persons may be granted, as previously provided for by section 257 of the Basic Labour Act of 1997, the Committee requests the Government to supply information on these special grounds and the conditions under which such permission may be given, indicating in particular the age of the young persons and the types of work they are authorized to perform.**

## Yemen

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

While acknowledging the difficult situation prevailing in the country, the Committee notes with **regret** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and practical application of the Convention.* In its previous comments, the Committee noted that according to the findings of the National Child Labour Survey carried out in 2010 by the Central Statistical Organization (CSO) in collaboration with ILO-IPEC, 21 per cent of children between the ages of 5 and 17 were employed (11 per cent of 5–11 year-olds; 28.5 per cent of 12–14 year-olds and 39.1 per cent of 15–17 year-olds). The majority of working children were unpaid family workers (58.2 per cent) followed by 56.1 per cent working in the agricultural sector and 29 per cent working in the private household.

The Committee notes the information provided by the Government in its fourth periodic report to the Committee on the Rights of the Child (CRC) of 23 October 2012 (2012 report to the CRC) that the Government has been focusing on projects related to education, health, social affairs and youth with an emphasis on vital projects for children, including the National Poverty Reduction Strategy (2003–15) and the National Strategy for Children and Youth (2006–15) (CRC/C/YEM/4, paragraph 23). It also notes from the Government's report to the CRC that it is in the process of drafting a national action plan to combat child labour in cooperation with the ILO and the Centre for Lebanese Studies. While noting the measures taken by the Government, the Committee expresses its **concern** at the large number of children working below the minimum age for admission to employment or work. **The Committee therefore strongly encourages the Government to intensify its efforts to ensure the progressive elimination of child labour. In this regard, the Committee expresses the firm hope that the national**

*action plan to combat child labour will be developed and implemented in the very near future. The Committee further requests the Government to provide information on the manner in which the Convention is applied in practice, including extracts from the reports of inspection services and information on the number of inspections aimed, in whole or in part, at addressing child labour, as well as on the number and nature of violations detected involving children.*

*Article 2(3). Compulsory education.* The Committee previously noted the findings of the 2010 Child Labour Survey which indicated that the school attendance rate for 6–14-year-old children (ages for compulsory schooling) stood at 73.6 per cent. It also noted the information from the UNESCO *Education for All Monitoring Report 2011* that, in 2008, Yemen had the most children out of school in the region, more than 1 million.

The Committee notes the Government's information in its 2012 report to the CRC that it has adopted a number of policies and measures designed to expand basic education and enhance its effectiveness through the National Strategy for Basic Education (2003–15), the National Strategy for the Development of Secondary Education, the Strategy for Girls' Education and the Yemen Strategic Vision 2015. The Committee notes however that according to the UNESCO Institute for Statistics, in 2011, the net enrolment rates (NER) in primary education was 76 per cent (82 per cent for boys and 69 per cent for girls) while the NER at the secondary school level was 40 per cent (48 per cent for boys and 31 per cent for girls). While taking due note of the efforts made by the Government, the Committee expresses its *deep concern* at the low enrolment rates at the primary and secondary levels as well as at the high drop-out rates. *Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to intensify its efforts to increase the school enrolment and attendance rates at the primary and secondary levels and to reduce school drop-out rates. It requests the Government to provide information on the progress made in this regard and on the results achieved.*

*Article 6. Minimum age for admission to apprenticeship.* The Committee previously noted that the Labour Code does not contain a minimum age for apprenticeships, and recalled that by virtue of Article 6 of the Convention, a young person must be at least 14 years of age to undertake an apprenticeship. *Noting that Ministerial Order No. 11 also does not contain any provisions related to apprenticeship, the Committee once again requests the Government to take the necessary measures to adopt provisions establishing the minimum age for apprenticeship in conformity with Article 6 of the Convention. It requests the Government to provide information on any developments in this regard in its next report.*

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

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

While acknowledging the difficult situation prevailing in the country, the Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

#### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 103rd Session, May–June 2014)***

The Committee takes note of the Government's report as well as of the detailed discussion which took place at the 103rd Session of the Conference Committee on the Application of Standards in June 2014 concerning the application by Yemen of Convention No. 182.

*Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Compulsory recruitment of children for armed conflict.* The Committee previously noted that the recruitment of children under 18 years for armed conflict by the armed forces and armed groups had become an issue of serious and ongoing concern.

The Committee notes that the Government representative of Yemen, during the discussion at the Conference Committee on the Application of Standards in June 2014, acknowledged the serious situation of children in his country due to their involvement in armed conflict. The Committee notes the Government's statement that it signed with the Special Representative of the United Nations Secretary-General for Children and Armed Conflict, an action plan to end and prevent the recruitment of children by armed forces. This action plan sets out concrete steps to release all children associated with the government security forces, reintegrate them into their communities and prevent further recruitment. The Committee notes that the measures to be undertaken within this action plan include: aligning domestic legislation with international norms and standards prohibiting the recruitment and use of children in armed conflict; issuing and disseminating military orders prohibiting the recruitment and use of children below age 18; investigating allegations of recruitment and use of children by the Yemeni government forces and ensuring that responsible individuals are held accountable; and facilitating access to the United Nations to monitor progress and compliance with the action plan. The Government representative further stated that a National Dialogue Congress was held from 18 March 2013 to January 2014 which discussed several issues related to the rebuilding of the State, one among which was the reformulation of laws and regulations in order to safeguard the rights of children, including protection from involvement in armed conflict.

The Committee notes that the Conference Committee, while noting the adoption of this action plan, expressed its serious concern at the situation of children under 18 being recruited and forced to join armed groups or the government forces. It urged the Government to take immediate and effective measures, as a matter of urgency, to put a stop in practice to the forced recruitment of children under 18 years by the government forces and associated forces, in particular by ensuring the effective implementation of the newly adopted action plan.

In this regard, the Committee notes from the Government's report that the Chief of General Staff of Armed Forces and the Prime Minister have reiterated their commitment to implementing the measures agreed upon in the action plan so as to end the illegal recruitment of children by armed forces. The Committee notes, however, that according to the report of the United Nations Secretary-General to the Security Council of May 2014, the United Nations documented 106 cases of recruitment of children, all boys between 6 and 17 years of age. The report of the Secretary-General also indicated that 36 children were killed and 154 children were maimed. While noting the measures taken by the Government to prevent the recruitment of children by the armed forces in the context of the action plan, the Committee is bound to express its *deep concern* at the situation and the number of children involved in armed conflict. *The Committee, therefore, urges the Government to take immediate and effective measures to ensure that the action plan to put an end to the recruitment and use of children in the armed forces will be*

*effectively implemented as a matter of urgency. It also requests the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out and to ensure that adequate penalties constituting an effective deterrent are imposed in practice. The Committee requests the Government to provide information on the measures taken and results achieved in this respect.*

*Article 5. Monitoring mechanisms.* The Committee previously noted with concern the findings of the first National Child Labour Survey, that 50.7 per cent of child labourers were engaged in hazardous work of which the overwhelming majority (95.6 per cent) were employed in hazardous occupations and the rest in hazardous economic activities (that is, mining and construction).

The Committee notes the statement made by the Government representative of Yemen to the Conference Committee that the Yemeni Government was in a difficult situation due to the economic problems, armed conflict and violence that had resulted in the destabilization of the country and which led people to resort to the illegal recruitment and exploitation of children. The Government representative further stated that while up to 2010, the number of children in child labour was around 600,000, this number has currently reached 1.5 million. He further stressed the need of his country for material and moral assistance through launching economic projects and providing jobs for the unemployed, as well as supporting families to encourage them to ensure the return of their children to school.

The Committee notes that the Conference Committee noted with serious concern the high number of children currently engaged in child labour in the country, the majority of whom were employed in hazardous occupations, including agriculture, the fishing industry, mining and construction. The Conference Committee requested the Government to strengthen the capacity and expand the reach of the labour inspectorate in enforcing Ministerial Order No. 11 of 2013 on hazardous work prohibited to children under the age of 18 years, including in rural areas.

In this regard, the Committee notes the Government's indication that no convictions or penalties were issued against persons found in violation due to the current political situation in the country. It also notes the Government's indication that the provisions of Ministerial Order No. 11 of 2013 has not yet been put into effect since the child labour monitoring unit is encountering difficulties in carrying out its tasks due to security reasons as well as a lack of financial resources and qualified personnel. *While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to strengthen the functioning of the labour inspectorate by providing it with adequate human and financial resources in order to enable it to monitor the effective implementation of the national provisions giving effect to the Convention, in all sectors where the worst forms of child labour exist. It also urges the Government to take the necessary measures to put into effect Ministerial Order No. 11 of 2013, without delay and to ensure that persons who infringe the provisions of this Ministerial Order are prosecuted and that sufficiently effective and dissuasive sanctions are applied. It requests the Government to provide information on the measures taken in this regard and on the results achieved.*

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. Children in armed conflict and hazardous work.* The Committee notes that the Conference Committee, in its conclusions, strongly encouraged the Government to provide access to free basic education for all children, particularly children removed from armed conflict and children engaged in hazardous work, with special attention to the situation of girls. In this regard, the Conference Committee called on the ILO member States to provide assistance to the Government of Yemen and encouraged the Government to avail itself of ILO technical assistance in order to achieve tangible progress in the application of the Convention.

The Committee notes the absence of information in the Government's report on this matter. *The Committee therefore requests the Government to take effective and time-bound measures to ensure that child soldiers removed from armed groups and forces as well as children removed from hazardous work receive adequate assistance for their rehabilitation and social integration including reintegration into the school system or vocational training, wherever possible and appropriate. It requests the Government to provide information on the measures taken in this regard and on the results achieved.*

*Noting the Government representative's intention to seek ILO technical assistance in its efforts to combat child labour, the Committee encourages the Government to consider seeking technical assistance from the ILO.*

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

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

## Zambia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1976)**

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the in-depth discussion on the application of the Convention by Zambia in the Committee on the Application of Standards at the 106th Session of the International Labour Conference in June 2017. The Committee notes that, while taking into account the legislative evolution of this case, the Conference Committee noted with concern that the national legislation does not define schoolgoing age and the age of completion of compulsory education. The Conference Committee called upon the Government to strengthen its efforts to ensure the elimination of child labour both in the formal and informal sectors of the economy, including under hazardous conditions; to take the necessary measures to ensure that the amended Education Act sets the age of completion of compulsory education at 15 years of age and is effectively implemented in practice; to provide detailed information on the implementation of Statutory Instrument No. 121 of 2013 on the prohibition of employment of children and young persons (hazardous labour); to strengthen the capacity of the district child labour committee and the labour inspectorate; and to pay special attention to the needs of girls and other vulnerable persons. Finally, the Conference Committee requested the Government to avail itself of ILO technical assistance to ensure the full and effective application of the Convention, including the adoption of a time-bound

action plan, and to provide information on the measures taken in this regard for examination by the Committee of Experts in 2017.

The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2016.

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* The Committee had previously noted that the Education Act of 2011 neither defined the school going age nor indicated the age of completion of compulsory schooling. It had further noted that according to section 34 of the Education Act of 2011, the Minister may, by statutory instrument, make regulations to provide for the basic school going age and age for compulsory attendance at educational institutions.

The Committee notes the Government's indication in its report that the Education Act and Education Policy are undergoing revision. *The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the revision of the Education Act will define the basic school going age and the age of completion of compulsory schooling of 15 years, so as to link it with the minimum age for employment for Zambia. It expresses the hope that the revised Education Act will be adopted in the near future. The Committee requests that the Government provide information on any progress made in this regard.*

*Article 3(2). Determination of hazardous work.* The Committee previously noted that the draft statutory instrument on the list of hazardous work was in the process of being approved by the Minister of Justice.

The Committee notes that the Statutory Instrument No. 121 of 2013 on the prohibition of employment of young persons and children (hazardous labour) has been adopted and that it prohibits the employment of children and young persons under the age of 18 years in hazardous work. Section 3(2) of the Statutory Instrument contains a list of 31 types of hazardous work prohibited to children and young persons, including: animal herding; block or brick making; charcoal burning; explosives; exposure to dust, high levels of noise, asbestos and silica dust, high voltage, lead, toxic chemicals and gases; spraying of pesticides or herbicides; exposure to waterborne diseases and infections; exposure to physical or sexual abuse; excavation/drilling; welding; stone crushing; work underground and underwater; work at heights; fishing; handling tobacco and cotton; lifting heavy loads; operating dangerous machinery or tools; long working hours; night work; and selling or serving in bars. *The Committee requests that the Government provide information on the application in practice of Statutory Instrument No. 121 of 2013, including statistics on the number and nature of violations reported and penalties imposed.*

*Labour inspectorate and application of the Convention in practice.* The Committee previously noted that according to the joint ILO-IPEC, UNICEF and World Bank report on Understanding Children's Work (UCW) in Zambia of 2012, although there has been a substantial reduction in the incidence of child labour, over one third of children aged 7–14 years, some 950,000 children were working, of which nearly 92 per cent worked in the agricultural sector.

The Committee notes the Government's information in its report that a number of provinces have active programmes against child labour, such as sensitization of parents, farmers and employers on child labour and hazardous work. The District Child Labour Committees (DCLC) in the Kaoma and Nkeyama districts in the Western Province, in collaboration with Japan Tobacco International (JTI) and Winrock International, are progressively bringing an end to child labour in tobacco growing communities by focusing on education. The Government also indicates that according to the 2015 annual review of the Achieving Reduction of Child Labour in Support of Education project (ARISE), a joint initiative of the ILO, JTI and Winrock International developed with the involvement of national governments, social partners, and tobacco growing communities, about 5,322 children have been withdrawn from child labour and placed in schools; 11,570 community members and teachers were educated about child labour, while 797 households improved their income to take care of their children. The Committee also notes the Government's indication, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182) that an Inter-ministerial National Steering Committee on Child Labour has been established to coordinate various interventions relating to child labour and that more labour officers have been hired in various districts to boost the inspectorate and enhance the enforcement of labour laws. Accordingly, following the inspections carried out by the labour inspectors, it has been identified that hazardous child labour exists in small-scale mining, agriculture, domestic work, and trading sectors, generally in the informal economy. The Committee further notes from the Government's report that according to the findings of the Child Labour Report of 2012, an estimated 1,215,301 children were in child labour, registering an increase from 825,246 children in 2005. The Committee notes with *concern* that a large number of children are engaged in child labour, including in hazardous work in the country. *While taking note of the measures taken by the Government, the Committee urges the Government to strengthen its efforts to ensure that, in practice, children under the minimum age of 15 years are not engaged in child labour. In this regard, the Committee requests that the Government strengthen the activities of the District Child Labour Committees to reduce child labour as well as to strengthen the capacity and expand the reach of the labour inspectorate in monitoring the situation of child labour, especially in the informal economy. It requests that the Government continue to provide information on the measures taken in this regard and on the results achieved.*

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

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 5** (Saint Lucia); **Convention No. 59** (Lebanon, Paraguay); **Convention No. 77** (Haiti, Lebanon, Peru, Spain, Tajikistan, Ukraine); **Convention No. 78** (Haiti, Lebanon, Peru, Spain, Tajikistan, Ukraine); **Convention No. 79** (Tajikistan); **Convention No. 90** (Mexico, Swaziland, Tajikistan); **Convention No. 123** (Mongolia, Uganda); **Convention No. 124** (Kyrgyzstan, Uganda, Viet Nam); **Convention No. 138** (Afghanistan, Albania, Angola, Azerbaijan, Barbados, Belize, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Burundi, Cabo Verde, Cambodia, Chad, China, Comoros, Congo, Costa Rica, Cuba, Democratic Republic of the Congo, Djibouti, Dominican Republic, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Gambia, Guinea, Guinea-Bissau, Haiti, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Republic of Maldives, Nicaragua, Nigeria, Pakistan, Panama, Papua New Guinea, Rwanda, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Sierra Leone,

*Solomon Islands, Sudan, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Uganda, Yemen, Zambia*); **Convention No. 182** (*Afghanistan, Albania, Algeria, Angola, Argentina, Azerbaijan, Bahamas, Bangladesh, Belize, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, El Salvador, Equatorial Guinea, Estonia, Fiji, Gambia, Ghana, Guinea-Bissau, Guyana, Haiti, Lao People's Democratic Republic, Lebanon, Malawi, Republic of Maldives, Nicaragua, Pakistan, Panama, Papua New Guinea, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Serbia, Sierra Leone, Solomon Islands, Somalia, Sri Lanka, Sudan, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Tunisia, Turkey, Uganda, Vanuatu, Yemen*).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 59** (*United Republic of Tanzania*); **Convention No. 77** (*Turkey*); **Convention No. 90** (*Croatia*); **Convention No. 123** (*Turkey*); **Convention No. 124** (*Ukraine, United Kingdom*); **Convention No. 138** (*Bahrain, Croatia, Cyprus, Czech Republic*); **Convention No. 182** (*Antigua and Barbuda, Bahrain, Belarus, Bulgaria, Cyprus, Czech Republic, Finland, France, Slovenia*).

## Equality of opportunity and treatment

### Algeria

#### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)**

*Articles 1 and 2 of the Convention. Assessment of the gender pay gap.* The Committee notes with *interest* that, in its report, the Government provides statistical data disaggregated by sex on the average net monthly wages of men and women in 2011, by sector of activity and job category (executives, supervisors, employees etc.). The Committee notes that, according to this data, the overall wage gap is 15.4 per cent in favour of women. The wage gaps in favour of women are found particularly in agriculture and fishing (21.6 per cent), transport and communications (18.4 per cent), construction (17.4 per cent), administration (15.2 per cent) and health (8.4 per cent). The available data also confirms the very low participation rate of women in the formal labour market (5,649,365 men workers and 1,055,171 women workers), which was also emphasized by the Government in its report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee notes that the wage gap in favour of men is more prominent in real estate and enterprise services (28.4 per cent), “extraterritorial activities” (19.6 per cent), education (7.4 per cent) and especially domestic services (36.6 per cent). The Committee wishes to draw the Government’s attention to the fact that the low participation of women in the formal labour market and the high level of the positions that they occupy may explain these wage gaps in favour of women in certain sectors. Considering the high qualification level of women in the country, they occupy positions in higher categories in certain sectors (particularly sectors in which men are in the majority), and consequently well-paid positions (for example, women represented 27.7 per cent of executives in 2011), which reduces the pay gap between men and women, and even reverses it in favour of women in certain sectors. Moreover, the Committee notes that the data on wages, which are collected regularly from enterprises by the National Statistics Office in conducting the annual survey on wages, are not disaggregated by sex, which means that the trends in the data cannot be monitored regularly. ***In order to be able to follow the trends in pay gaps over time, particularly given the small but steady increase in the participation of women in the formal labour market, the Committee asks the Government to take the necessary steps to continue to regularly collect and analyse comprehensive data on the remuneration of men and women, by vocational category and in all sectors of economic activity, including the public sector, and to supply this data disaggregated by sex.***

*Article 2(2). Civil service. Legislation.* The Committee recalls that the civil service is governed by Ordinance No. 06-03 of 15 July 2006, which prohibits all discrimination, particularly on the grounds of sex (section 27), but does not contain any provisions on equal remuneration for men and women for work of equal value. The Committee recalls that, in the absence of a clear legislative framework, it is particularly difficult for men and women workers to assert their right to equal remuneration for work of equal value vis-à-vis employers, the relevant bodies and the courts. ***The Committee once again asks the Government to examine the possibility of amending Ordinance No. 06-03 of 15 July 2006 issuing the General Civil Service Regulations, in order to incorporate a provision explicitly providing for equal remuneration for men and women for work of equal value. It also asks the Government to take the necessary steps to assess the pay gaps between men and women in the civil service and to raise awareness among public officials and their organizations, as well as personnel managers, of the principle of equal remuneration for men and women for work of equal value.***

*Article 3. Objective evaluation and classification of jobs in the civil service.* The Committee notes that the Government’s report contains no new information in this regard. It notes that the Government reiterates that the General Civil Service Regulations are based on a system of classification and remuneration, and that these establish a classification method based on an objective and measurable criterion, namely the level of qualification as attested by degrees, diplomas and training courses. The Government once again indicates that the planned system is intended to renew the focus on qualifications, competence and personal merit, and that remuneration is fixed for each post, regardless of the sex of the person occupying it. The Committee recalls that, despite the existence of salary scales applicable to all public officials, without discrimination on the grounds of sex, pay discrimination in the public service can arise from the criteria applied in classifying jobs and from an undervaluation of the tasks performed largely by women, or from inequalities in certain supplementary wage benefits (allowances, benefits etc.). The Committee considers that the planned classification system, as it is based on a single criterion (qualification level), does not allow for the objective assessment of the post itself and could effectively result in the undervaluation of certain tasks, and in general, certain jobs that are largely performed by women. The Committee recalls that an objective job evaluation process, which aims to establish a classification and determine the corresponding remuneration, entails an evaluation of the nature of the tasks that each job involves, in terms not only of qualifications but also of the skills, effort (mental as well as physical) and responsibility that the post requires, and the working conditions of the post. Furthermore, often when equal remuneration for work of equal value is not one of the objectives explicitly envisaged by the evaluation and classification method, there is a risk that this method may reproduce sexist stereotypes relating to the vocational capacities and aspirations of women (see General Survey on the fundamental Conventions, 2012, paragraphs 700–703). ***The Committee once again requests the Government to review the job evaluation and classification method to ensure that the classification of jobs and the applicable salary scales in the public service is free of any gender bias and does not result in undervaluation of jobs mainly occupied by women. It also requests the Government to encourage the use of job evaluation methods based on objective criteria, such as skills***

*and qualifications, effort, responsibility and working conditions. The Government is also requested to provide information, disaggregated by sex, on the respective categories of personnel (A, B, C and D) in the public service.* The Committee recalls that the Government can avail itself of the technical assistance of the Office.

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)***

The Committee notes the observations sent on 31 May 2015 by the General and Autonomous Confederation of Workers in Algeria (CGATA) on the draft Bill issuing the Labour Code and its impact on the application of the Convention.

*Article 1 of the Convention. Protection against discrimination. Legislation. Private sector workers.* For many years, the Committee has been emphasizing that section 17 of Act No. 90-11 of 21 April 1990 on labour relations does not cover all the grounds of discrimination in employment and occupation listed by the Convention, and does not address discriminatory conduct by the employer or any other person towards a worker in all aspects of employment (recruitment, promotion, dismissal, etc.). This is because section 17 only provides that “any provision in a collective agreement or employment contract that may generate discrimination” is null and void. The Committee also recalls the general nature of section 6 of Act No. 90-11, which provides that workers are entitled to “protection against all discrimination regarding the occupation of a post other than distinctions made on the basis of their ability and merit”. The Committee notes with *regret* that the Government’s report contains no further information concerning the protection of workers against discrimination. The Committee also notes that the proposed section 12 of the October 2015 version of the draft Bill issuing the Labour Code repeats the general provisions of section 6 of Act No. 90-11. However, the Committee welcomes the inclusion of a definition of discrimination in the proposed section 31, in accordance with the Convention, and of the grounds of national extraction, social origin and religious beliefs, as stipulated in *Article 1(1)(a)* of the Convention, and the ground of nationality, in accordance with *Article 1(1)(b)*. It also welcomes the reference to direct and indirect discrimination, and notes that the proposed section 31 provides that “discrimination in employment and occupation is incompatible with the provisions of this Act”. Nevertheless, the Committee notes that reference is still made to “any provision in a collective agreement or employment contract”. The Committee considers that this does not cover discriminatory conduct or acts which do not result from the provisions of employment contracts or collective agreements. It also notes that the list of prohibited grounds of discrimination set out in the proposed section 31 omits the grounds of race and colour. ***While welcoming this progress, the Committee asks the Government to take the necessary steps to ensure that the future Labour Code explicitly prohibits all forms and acts of direct and indirect discrimination, on at least all of the grounds listed in Article 1(1)(a) of the Convention, including race and colour, and all other grounds specified pursuant to Article 1(1)(b), following consultation with the employers’ and workers’ organizations. It also asks that these provisions cover all aspects of employment and occupation, including particularly access to employment and occupation, and dismissal. The Committee asks the Government to provide information on any steps taken in this regard and on any progress made regarding the draft Bill issuing the Labour Code.***

*Civil servants.* In its previous comments, the Committee noted that Ordinance No. 06-03 of 15 July 2006 issuing the General Conditions of Service of Civil Servants prohibits all discrimination towards civil servants “on the basis of their opinions, sex, origin or any other personal or social circumstance” (section 27) and asked the Government to consider including in the list of prohibited grounds of discrimination an explicit reference to political opinion, religion, race, colour, national extraction and social origin. The Committee notes with *regret* that the Government’s report contains no information in this regard. ***Emphasizing the importance of implementing a comprehensive system to protect civil servants from discrimination, and to allow them to exercise their rights effectively, the Committee once again asks the Government to take the necessary steps to expand the list of prohibited grounds of discrimination by making an explicit reference to all of the grounds listed in Article 1(1)(a) of the Convention.***

*Article 1(1)(a). Discrimination based on sex. Sexual harassment.* The Committee welcomes the inclusion, in the proposed sections 56–59 of the draft Bill issuing the Labour Code (October 2015 version) of provisions that define both quid pro quo and hostile environment sexual harassment and protect against retaliation when an individual refuses to accede to harassment, and establishes disciplinary penalties. Nevertheless, the Committee draws the Government’s attention to the fact that these provisions do not expressly prohibit sexual harassment, but only victimization by the employer following sexual harassment. The Committee also notes the indication by the CGATA that the draft Bill issuing the Labour Code provides a protection against sexual harassment but emphasizes that the penalties established by the proposed section 58 do not appear to apply to employers, because these are disciplinary penalties, the imposition of which is the employer’s responsibility. ***While welcoming this progress, the Committee trusts that the Government will introduce into the Labour Code provisions expressly prohibiting all forms of sexual harassment, and that it will establish sanctions that apply to all authors and provide for appropriate remedies. As to practical measures to prevent sexual harassment, the Committee asks the Government to provide information on any steps taken as part of the National Strategy for the Prevention of Violence against Women adopted in 2007, or in any other context specifically concerning work, in collaboration with the employers’ and workers’ organizations.***

*Articles 2 and 3. National policy. Equality of opportunity and treatment between men and women.* For many years, the Committee has expressed serious concern regarding the low participation of women in employment and the persistence of strongly stereotyped attitudes with respect to the roles and responsibilities of women and men in society and in the family, both of which have a negative impact on women's access to employment and training. The Committee notes that the Government once again recognizes in its report that the employment rate for women remains relatively low and that among other matters social constraints and personal choices affect progress and hinder the integration of a greater number of women into the labour market. The Committee notes the statistics provided by the Government which show that, between 2010 and 2014, the number of women in employment increased from 1,474,000 to 1,722,000 and that the rate of placement for women by the National Employment Agency rose from 7.64 per cent in 2013 to 8.84 per cent in 2014. It also notes the information provided by the Government on the steps taken to create employment opportunities by the National Youth Employment Agency and the Unemployment Insurance Fund (in 2014: potential jobs for women: 8,960 by the National Youth Employment Agency and 6,332 by the Unemployment Insurance Fund). It also notes the measures adopted towards the promotion of paid employment through a vocational integration scheme and placements on subsidized work contracts (in 2014: 60,432 women beneficiaries through the vocational integration scheme: 60,432 and 26,368 women through subsidized work contracts). The Committee notes, however, that the female labour force participation rate (18.1 per cent) and the rate of economically active women (16.8 per cent) remain low. ***While welcoming the action aimed at supporting self-employment and paid employment of women, the Committee notes the limited results achieved, despite the increasing qualification levels of women. It once again asks the Government to take steps to ensure that in addition to these employment policy measures, specific awareness-raising measures aimed at actively combating gender bias and sexist stereotypes concerning the vocational aspirations and capabilities of women and their suitability for certain jobs are adopted. The Committee also asks the Government to take steps towards implementing schemes to help both men and women workers achieve a better balance between work and family responsibilities. The Committee asks the Government to provide information on any evaluation of the National Strategy for the Integration and Promotion of Women (2010–14) and the associated National Action Plan (2010–14), and on the activities of the monitoring committee, as well as information on any measures taken to apply the Women Workers' Charter, including the quota system applicable to positions of responsibility.***

*Article 5. Special protection measures. Work prohibited for women.* The Committee notes that proposed section 583 of the draft Bill issuing the Labour Code makes it possible to exclude women from certain types of work by means of regulations, for the purpose of protecting their health. The Committee nevertheless draws the Government's attention to the distinction to be drawn between special measures to protect maternity (in the broad sense), as envisaged in *Article 5* of the Convention, and measures based on stereotypical perceptions of women's capabilities and their role in society, which are contrary to the principle of equality of opportunity and treatment. The provisions relating to the safety and health of workers should provide for a safe and healthy environment for both men and women workers, while taking account of gender differences with regard to specific risks to their health. Moreover, 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 (see General Survey of 2012 on the fundamental Conventions, paragraphs 838–840). ***Consequently, the Committee once again asks the Government to ensure that the special measures for the protection of women are limited to that which is strictly necessary to protect maternity (in the broad sense), and that these provisions do not impede access for women to employment and occupation. It also invites the Government to consider the possibility of adopting accompanying measures aimed at, inter alia, improving health protection for men and women, security and the availability of adequate transport and social services to enable women to access all types of employment on an equal footing with men. The Committee asks the Government to supply information on any measures adopted in this regard.***

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

## Australia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)***

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) of 22 September 2015.

*Articles 1 and 2 of the Convention. Legislative developments and enforcement. Gender equality. Federal.* The Committee notes that in its observations the ACTU emphasizes the importance of maintaining coherent and effective legislative provisions with vigorous monitoring mechanisms in light of the findings of widespread discrimination in practice, in particular related to pregnancy and parental leave, in the national review undertaken by the Sex Discrimination Commissioner, on behalf of the Australian Human Rights Commission (AHRC). The ACTU points out that the adverse action provisions of the Fair Work Act 2009 are in need of strengthening and that they apply only to the extent the adverse treatment is a breach of the relevant State anti-discrimination law and therefore are subject to State-based inconsistencies and onerous burden of proof requirements. The Committee notes the Government's indication that the proposal to consolidate the five Commonwealth anti-discrimination Acts into a single comprehensive federal law was withdrawn and

does not form a part of the current Government policy. Thus, the provisions of the Fair Work Act 2009 (sections 351 and 361) thus continue to be limited (in a way reflecting State-based inconsistencies) (as indicated above). The Government reports that amendments have been made to the Fair Work Act 2009 through the Fair Work Amendment Act 2012, the Fair Work Amendment Act 2013 and the Fair Work Amendment Regulation 2013 (No. 2). The Committee notes that many of these amendments respond to the recommendations made by the Review Panel of the Fair Work Act 2009 concerning family friendly provisions which the Committee addresses in its observation under the Workers with Family Responsibilities Convention, 1981 (No. 156). The Committee also refers to its previous observation under the Equal Remuneration Convention, 1951 (No. 100), where it noted the amendments to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) which are aimed at streamlining workplace gender equality reporting requirements from the 2015–16 reporting period onwards while still meeting the gender policy objectives of the legislation. According to the ACTU, in addition to reducing reporting on remuneration, information relating to the number of applications and interviews conducted and the number of requests and approval of leave is no longer collected. ***The Committee asks the Government to continue to report on amendments made to the Fair Work Act 2009, its application in practice particularly related to any findings of discrimination. The Government is also asked to report on the application in practice of the federal anti-discrimination laws. The Committee also asks the Government to report on any developments relating to the adoption of comprehensive anti-discrimination legislation at the federal level. Further to its previous observation under Convention No. 100, the Committee asks the Government to provide information on any evaluation undertaken of the amendments made to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) and their impact in light of the requirements of this Convention, in particular, that effective equality of opportunity and treatment be ensured.***

*States. Victoria. Discrimination based on religion.* The Committee recalls from its previous comment the concern raised over sections 82(2) and 83(2) of the *Victoria* Equal Opportunity Act 2010, which provides exemptions to the prohibition of discrimination for religious bodies and schools that conform to the doctrines, beliefs or principles of a religion, or when it is reasonable to avoid injury to the religious sensitivities of adherents to the religion. The Committee notes the Government's reply that the Victorian Government is committed to amending the religious exemptions in the Equal Opportunity Act 2010 to reinstate an "inherent requirements" test for employment by a religious body or religious school. ***The Committee asks the Government to provide information on any amendments to the Equal Opportunity Act 2010 with a view to bringing the provisions regarding religious exemptions into conformity with the Convention by establishing an "inherent requirements" test.***

*Discrimination on the basis of race, colour and social origin. Indigenous peoples. Federal.* The Committee recalls that for a number of years it has been raising issues in its observations related to restrictions on the rights of indigenous peoples to land and property recognition and use. The Committee notes from the Government's report that the Council of Australian Governments (COAG) announced in 2014 that it would conduct an urgent investigation into indigenous land administration and use, to enable traditional owners to develop their land and to provide jobs and economic advancement for indigenous peoples, and that an Expert Indigenous Working Group was established in 2015 to provide guidance to the investigation, including through leadership on consultations and engagement with indigenous stakeholders. The Committee notes that, on 11 December 2015, the COAG published its report on its investigation into indigenous land administration. The investigation identified that indigenous land can and does support economic development and that the land systems are in a period of transition from a focus on recognition of rights to the use of rights for economic development. The report identifies five key areas where governments should focus their efforts: gaining efficiencies and improving effectiveness in the process of recognizing rights; supporting bankable interests in land; improving the process for doing business on indigenous land and land subject to native title; investing in the building blocks of land administration; and building capable and accountable land holding and representative bodies. The report makes six key recommendations to take forward this agenda, including many proposed amendments to the Native Title Act 1993. The Committee also notes that the AHRC facilitated an indigenous leaders' round table on property rights, in May 2015, in Broome to better enable economic development within the indigenous estate. The Committee notes that the National Anti-Racism Strategy includes a nationwide public awareness campaign against racism and the promotion of anti-racism initiatives including a training tool on systematic racism against Aboriginal and Torres Strait Islander peoples and a Workplace Cultural Diversity Tool. Recalling that the Racial Discrimination Act applies to discrimination against indigenous peoples in employment and occupation, the Committee notes the Government's indication that it is unaware of any significant indigenous employment discrimination cases brought under the Act. The Committee places importance on the new emphasis on the use of indigenous rights in land for the promotion of economic development including employment and occupational opportunities of indigenous peoples. ***The Committee asks the Government to provide specific information on the follow-up implementation to the COAG Report recommendations and the Broome consultations and any other steps taken to ensure that indigenous people have access to land and resources to allow them to engage in their traditional occupations and to access employment without discrimination. It also asks the Government to provide information on the impact of the measures introduced to implement the National Anti-Racism Strategy and the Racial Discrimination Act, and to monitor any related cases of discrimination submitted by members of indigenous peoples.***

*Equality of opportunity and treatment of indigenous peoples. Constitutional recognition.* The Committee recalls the steps undertaken to examine, raise awareness and build support for the constitutional recognition of Aboriginal and

Torres Strait Islander peoples, including the adoption of the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013. It further notes that the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples tabled its final report which recommended that a referendum on constitutional recognition should be held when it has the greatest chance of success, without specifying any time frame. The Committee notes that a Referendum Council was established to give advice on Aboriginal and Torres Strait Island Peoples, which issued a final report on 30 June 2017. It notes the “Uluru Statement from the Heart”, adopted at the National Constitutional Convention 2017, by the Aboriginal and Torres Strait Island Peoples calling for a “First Nations Voice”, and the Referendum Council’s call to amend the Constitution to provide for a national indigenous representative assembly to constitute a “Voice to Parliament”. The Committee notes, however, that the Government rejected the Referendum Council’s call for constitutional recognition. ***The Committee asks the Government to continue to provide information on the status of the process to recognize specifically Aboriginal and Torres Strait Islander peoples in the Constitution.***

*National policy and programmes for indigenous peoples.* The Committee notes the “Closing the Gap Strategy” which is a formal commitment by federal, state and territory governments to achieve equality for Aboriginal and Torres Strait Islander peoples within 25 years. The COAG has set measureable targets to monitor improvements in the strategy which include halving the gap in employment outcomes between indigenous and non-indigenous persons by 2018. The Committee notes from the Closing the Gap Prime Minister’s Report of 2017 that the employment target is not being met, and that while there has been an increase in the employment rate of indigenous peoples since 1994, there has been a decline since 2008. In 2014–15 only 35 per cent of indigenous peoples of working age in very remote areas were employed compared to 57.5 per cent of those living in major cities. To improve progress, the strategy calls for employment programmes to continue to link indigenous Australians with employment targets across the public sector and large infrastructure projects, and to help build the skills required for sustainable employment. In this regard the Committee notes that the Indigenous Procurement Policy has awarded contracts to 493 indigenous businesses. It also notes that under the Indigenous Advancement Strategy, the Government allocated 4.9 billion Australian dollars in 2015–16 to fund and deliver a range of programmes aimed at jobs, land and economic development. It also notes the new agreement on Northern Territory Remote Aboriginal Investment on getting children to school, adults into work and making communities safer, and the new community development programme which aims to ensure employment services are tailored to the unique labour markets and economic conditions in remote Australia.

*States.* The Committee notes the range of initiatives being undertaken in some of the states and territories to promote equality of opportunity and treatment of indigenous peoples and to address discrimination. The Committee notes the detailed information in the Social Justice and Native Title Report 2016, on the stolen wage reparations programmes undertaken in *Queensland*, *New South Wales (NSW)* and *Western Australia* to establish inquiries and to provide trusts and claims procedures for indigenous peoples whose economic participation and wages have been restricted in those jurisdictions regarding *Queensland*, the Committee notes the adoption of the Multicultural Recognition Act No. 1 of 2016 which requires the preparation of a multicultural policy and a multicultural action plan to implement the policy. It also notes that, in 2015, the NSW Public Service Commission launched the NSW Public Sector Aboriginal Employment Strategy 2014–17 to increase the Aboriginal workforce across the NSW public sector. In *Western Australia*, the Aboriginal Employment Strategy has been developed by the Public Service Commission to attract Aboriginal people to public sector training and employment. Further in *South Australia*, the Strategic Plan provides a set of targets addressing discrimination against indigenous peoples including in employment and occupation; and in *Tasmania*, the minister in charge of the state service has issued a directive regarding the employment of Aboriginal and Torres Strait Islanders.

***Noting that despite the numerous measures and initiatives, the indigenous peoples continue to be disadvantaged and that employment targets are not met, the Committee asks the Government to continue to reinforce its efforts and to provide information on any evaluations or reviews aimed at assessing and improving the impact of these measures and initiatives on employment and occupation outcomes. It also asks the Government to continue to provide detailed information on the policies and programmes developed and measures adopted to address discrimination and to promote equality of opportunity and treatment in employment and occupation for indigenous peoples at the federal, state and territory levels and their impact, including with regard to the “Closing the Gap” targets.***

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

### ***Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1990)***

The Committee notes the observations by the Australian Council of Trade Unions (ACTU) of 31 August 2016.

*Article 3 of the Convention. National policy. Non-discrimination.* The Committee notes from the information provided by the ACTU that balancing work and family is an issue of high priority for both men and women and the most important driver of job satisfaction. It also notes the findings of widespread discrimination in practice, in particular related to pregnancy and parental leave, set out in the 2014 national review undertaken by the Sex Discrimination Commissioner on behalf of the Australian Human Rights Commission. The Committee notes from the Government’s report that a number of legislative amendments have been made to the Fair Work Act 2009 (FWA) and Fair Work Regulations 2009 between 2013 and 2015 to support women and men in balancing work and caring responsibilities in the home and that they respond in part to the recommendations contained in the final reports on Supporting Working Parents: Pregnancy and

Return to Work National Review (2014) by the Australian Human Rights Commission. These changes include broadening the application of the right to request flexible working arrangements, requiring employers to consult the requesting employee about roster changes and decisions relating to requests for extension of unpaid parental leave, increasing the period of concurrent unpaid parental leave taken by both parents, and ensuring that all women have the right to transfer to a safe job while pregnant and that they do not lose unpaid parental leave when taking special maternity leave due to pregnancy-related illness. While welcoming these amendments, the Committee notes that according to the ACTU the current regulatory framework has been ineffective in driving the change in attitudes and practice that is required in order to address discrimination experienced by workers with family responsibilities. Specifically, the ACTU observes that the provisions (sections 65 and 76 of the FWA) do not place an obligation on employers to reasonably accommodate a request for flexible working arrangements, that the reasonable business grounds basis for refusal of a request as permitted by the FWA is very broad, and that there is no right of appeal for refusals unless made part of a workplace agreement. ***Drawing attention to the importance of ensuring that the needs of workers with family responsibilities in their terms and conditions of work are taken into account, the Committee asks the Government to provide information on the steps taken to ensure effective equality of opportunity and treatment of workers with family responsibilities through ensuring the existence of an adequate legal framework and improving the application in practice of the relevant provisions in the FWA 2009 and the Fair Work Regulations 2009, as amended, and the Sex Discrimination Act 1984, and the Workplace Gender Equality Act 2012 in accordance with the Convention. The Committee also asks the Government to continue to provide summaries of judicial or administrative decisions addressing discrimination for reason of family or care responsibilities.***

***Article 4. Paid leave and working arrangements.*** The Committee notes with ***interest*** that the Paid Parental Leave Act 2010 was amended in 2012 to extend the scheme of parental leave to eligible working fathers and partners, including adopting fathers and parents in same sex couples and that since its commencement on 1 January 2013 and 30 June 2015, 173,140 persons have received “Dad or Partner Pay”. The Committee notes the concerns of the ACTU over the intention of the Government announced in April 2016 to pursue cuts to the existing Paid Parental Leave Scheme established under the Paid Parental Leave Act 2010. ***The Committee asks the Government to provide information on any changes made to the provisions and implementation of the Paid Parental Leave Act 2010. It also asks the Government to continue to provide statistical information on the practical application of sections 65 and 76 of the FWA, disaggregated by sex, including the number of requests granted and denied for changes in working arrangements and parental leave.***

***Article 5. Childcare services.*** The Committee notes from the Government’s report that the number of early childhood education and care services has expanded substantially over the reporting period and that workforce participation rates of mothers with a child under 15 years has grown from 57 to 67 per cent over the past two decades. It notes the Government funded childcare assistance provided through the Child Care Benefit and Child Care Rebate and the National Partnership to support states’ and territories’ pre-school programmes. It also notes the observation of the ACTU that notwithstanding this expansion, access to affordable early education and childcare still remains a significant problem. It refers to the Productivity Commission Inquiry Report on Childcare and Early Childhood Learning, 2014 which estimates that there are approximately 165,000 parents who would like to work, or increase their hours but are unable to do so because of difficulties in accessing childcare. In response to recommendations of the Productivity Commission’s review, the Government has announced the Jobs for Families Care Package designed to create a simpler, more flexible, affordable and sustainable childcare system targeted to those who need it most. The Committee notes that the ACTU is concerned about a number of the elements in the Package as well as its funding. ***Noting the Productivity Commission’s Report, the Government’s response to it and the concerns of the ACTU, the Committee requests the Government to provide information on the Jobs for Families Care Package, in particular on how it has affected low- and middle-income families in terms of balancing work and family responsibilities.***

***Article 6. Information and education.*** The Committee notes from the Government’s report that over the past few years the Australian Human Rights Commission and the Fair Work Ombudsman have released a number of best practice resources, including guides and websites, for employers and employees on combining work and family responsibilities. It also notes the issuance of guidelines on flexible workplaces issued by the *South Australia* Commissioner for Public Sector Employment and the publications on creating flexible work arrangements issued under the Public Service Commission of *Queensland*. ***The Committee hopes that the federal government institutions as well as those of the states and territories will undertake more affirmative public education outreach programmes targeted at employers and supervisors, particularly in small and medium-sized businesses, with the aim of promoting the rights and benefits relating to reconciling work and family responsibilities and reducing organizational obstacles and biases against accommodating workers with family and care responsibilities.***

## Bahamas

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)***

The Committee notes the very succinct report provided by the Government stating that the matters dealt with in the previous comments will be raised and discussed with employers’ and workers’ organizations via the National Tripartite Council with a view to effecting the recommended changes to section 6 of the Employment Act 2001. In this regard, the

Committee notes with *regret* that the other questions raised previously about the determination of rates of remuneration, objective job evaluation, collective agreements and the effectiveness of the enforcement mechanisms have not been addressed since 2004. *The Committee wishes to reiterate that without the necessary information, it is not in a position to assess the effective implementation of the Convention, including the progress achieved since its ratification in 2001. It hopes that the next report will contain full information on the points described below.*

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation. Noting with regret that the adoption of the Employment (Amendment) Act 2012 did not amend section 6 of the Employment Act 2001 in a way that gives full legislative expression to the principle of equal remuneration for men and women for work of equal value, the Committee asks the Government to take steps to amend section 6 of the Employment Act 2001, in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. In this regard, the Committee asks the Government to ensure that its legislation allows for the comparison not only of jobs in the same establishment and requiring substantially the same skill, effort and responsibility, and performed under similar working conditions, but also of work of an entirely different nature which is nevertheless of equal value, and provides for a broad definition of “remuneration” as set out in Article 1(a) of the Convention. The Committee encourages the Government to seek ILO technical assistance in this regard.*

*Article 2. Determining rates of remuneration. Noting that the requested information has not been received, the Committee trusts that the Government will be in a position to provide information in its next report on the manner in which remuneration is determined in the civil service and the public sector, including copies of wage scales and information on the method used to establish them.*

*Article 3. Objective evaluation of jobs. The Government’s report being silent on this point, the Committee hopes that the Government’s next report will include information on and examples of agreements and policies providing for objective job evaluation as well as information on any measures taken or envisaged to promote the development and use of objective job evaluation systems on the basis of the work performed in the public and the private sectors.*

*Article 4. Cooperation with workers’ and employers’ organizations. The Committee asks the Government to include information in its next report on the measures taken by employers’ and workers’ organizations to achieve equal remuneration for men and women for work of equal value and to indicate the measures envisaged to encourage the social partners to include provisions on equal remuneration between men and women for work of equal value in their agreements.*

*Enforcement. The Committee notes the Government’s statement that, a search of rulings of the Industrial Tribunal, the Supreme Court of Bahamas and the Bahamas Court of Appeal did not reveal any decisions involving questions related to the application of the Convention. In this regard, the Committee must recall that the absence of complaints does not necessarily indicate an absence of violations. It may rather indicate a lack of understanding of the principle by the labour inspectorate, as well as by workers and employers, or a lack of accessible complaints procedures. The Committee hopes that the Government will take steps to improve the capacity of labour inspectors to detect and address unequal pay for work of equal value, and to ensure that workers are apprised of their right to equal pay for work of equal value and of the dispute resolution mechanisms available. The Committee asks the Government to provide information on any activities undertaken in this regard.*

*Practical application and statistics. Previously, the Committee had noted the statistics of 2005 on the “employed persons in the hotel industry by occupation, sex, average hours worked and average wage per week – All Bahamas”, attached to the Government’s report, indicating that pay differentials exist between men and women in almost all occupations and that women are more often than men concentrated in the lower paid occupations. The weekly wage gap between men and women is particularly striking in the higher category of senior officials and managers. While men and women are more or less equally distributed in this occupational category, the gender gap in weekly wages is about 31.3 per cent. In the absence of any further information provided in this regard, the Committee asks again the Government to take steps to determine the underlying reasons for these wage differentials between men and women, and to indicate the measures taken or envisaged to address these differentials in the various occupations, particularly in the higher-level occupational category of senior officials and managers. The Government is also asked to continue to provide statistical information on the earnings of men and women in the different economic sectors and occupations in the public and in the private sectors.*

Finally, the Committee notes that in its report to the United Nations Committee on the Elimination of Discrimination against Women, the Government indicated that in 2012 the Prime Minister appointed a Constitutional Committee to conduct a comprehensive review of the Constitution of the Bahamas and to recommend changes to it in advance of the country’s 40th anniversary of Independence. In July 2013, the Constitutional Committee presented its report and called for the adoption of the proposed amendments (four Constitution (Amendment) Bills) via a national referendum, scheduled to be held on 7 June 2016 (CEDAW/C/BHS/6, 26 May 2017, paras 4–7). The Committee notes that, in June 2016, the first round of constitutional reform aiming at instituting full equality between men and women in matters of citizenship and more broadly to eliminate discrimination based on sex has been rejected by the Bahamian voters; the Fourth amendment would have updated article 26 of the Constitution, to make it unconstitutional for Parliament to pass any laws that discriminate based on sex. *The Committee asks the Government to indicate the impact of this vote on the*

*implementation of the Convention, and to provide information on any developments regarding the constitutional reform process, in particular in relation to the provisions that may affect the effective application of the Convention. The Committee also urges the Government to provide detailed information on all the points mentioned in its previous comments.*

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

## **Bahrain**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** *(ratification: 2000)*

#### ***Follow-up to the conclusions of the Committee on the Application of Standards*** ***(International Labour Conference, 106th Session, June 2017)***

The Committee notes the discussion at the Conference Committee on the Application of Standards at its 106th Session (June 2017) and the conclusions adopted which called upon the Government of Bahrain to:

- (i) report on the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014 in connection with the Government's efforts to comply with Convention No. 111 to the Committee of Experts for its November 2017 session;
- (ii) ensure that the legislation covers all recognized prohibited grounds of discrimination set out in *Article 1(1)(a) of the Convention*, and discrimination in both its direct and indirect forms, and undertake measures to ensure that discrimination in employment and occupation is prohibited in law and in practice;
- (iii) ensure that migrant workers as well as domestic workers are included in the protection of anti-discrimination law;
- (iv) ensure equality of opportunity and treatment in employment of women; and
- (v) ensure sexual harassment is prohibited in the Labour Code and provide information regarding how complaints of this nature may be advanced, to the Committee of Experts for its November 2017 session.

The Committee also notes that the Conference Committee invited the Government to accept a direct contacts mission, and that the ILO Office is still awaiting the Government's response.

The Committee also notes the observations from the International Organisation of Employers (IOE) received 6 September 2017, the International Trade Union Confederation (ITUC) received 1 September 2017, and Education International (EI) and the Bahrain Teachers Association (BTA) received 6 September 2017, which were sent to the Government for its comments thereon.

#### ***I. Measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014***

*Article 1 of the Convention. Discrimination on the basis of political opinion.* The Committee recalls that, at the 100th Session (June 2011) of the International Labour Conference, a complaint under article 26 of the ILO Constitution was filed by some Workers' delegates at the Conference concerning the non-observance by Bahrain of Convention No. 111. According to the complaint, in February 2011, suspensions and various forms of sanctions, including dismissals, were imposed on members and leaders, as a result of peaceful demonstrations demanding economic and social changes and expressing support for ongoing democratization and reform. The complaint alleged that these dismissals took place on grounds of the workers' opinions, belief and trade union affiliation. At its 320th Session (March 2014), the Governing Body welcomed a Tripartite Agreement, reached in 2012 by the Government, the General Federation of Bahrain Trade Unions (GFBTU) and the Bahrain Chamber of Commerce and Industry (BCCI), as well as a Supplementary Tripartite Agreement of 2014. The Governing Body invited this Committee to examine the application of the Convention by the Government, and to follow up on the implementation of the agreements reached. According to the Tripartite Agreement of 2012, the national tripartite committee that had been put in place to examine the position of those workers who had been dismissed or that were referred to the criminal courts should continue its work to ensure the full reinstatement of workers. In addition, under the Supplementary Tripartite Agreement of 2014, the Government, the GFBTU and the BCCI had agreed to: (i) refer to a tripartite committee those cases which had not been settled and which relate to financial claims or compensation and, in the absence of consensus, refer such cases on for a judicial determination; (ii) ensure social insurance coverage for the period of interrupted services; and (iii) reinstate the 165 remaining workers dismissed from public sector employment and from the major private companies in which the Government has shares and from other private companies according to the list annexed to the Supplementary Tripartite Agreement.

In its report, the Government recalls that, at the date of reporting (30 August 2017), 98 per cent of all cases involving dismissal and mentioned in the Tripartite Agreement of 2012 had been successfully settled (reinstatement with full retention of their employment and pension rights and benefits) and that this file has been closed, with the agreement of the three parties. As for the remaining 2 per cent (or the 165 outstanding problematic cases where there was disagreement with the employers), the Government indicates that, although they concern cases where the persons concerned have been subject to a criminal conviction or where no link has been proven between dismissal and the events of 2011, it had agreed

(under the framework of the Supplementary Tripartite Agreement of March 2014) to continue negotiations with employers to settle these cases or find the workers concerned alternative employment. According to the Government, 108 cases have been processed and settled by reinstating the workers or finding them similar alternative work with the same pay and benefits. A number of dismissed workers accepted the financial compensation offered, while others have obtained commercial licences and become independent business persons.

The Government further explains that, on 5 January 2017, the GFBTU wrote to it requesting that greater efforts be made to address the 37 remaining cases of the 165 on the list annexed to the Tripartite Agreement, which the GFBTU viewed as outstanding and not yet finalized. In line with the principle of sustained cooperation and partnership with the GFBTU, the Government exerted all possible efforts to settle the 37 problematic cases, despite differences of opinion on the causes of dismissal in these cases. The results of these efforts are that of these 37 cases: (i) ten workers dismissed were reinstated despite the difficulties encountered; (ii) two were offered a financial settlement upon their request, as they did not wish to return to work; (iii) of the 18 workers who were the subject of criminal conviction, 13 cases have been settled. Despite the fact that the Government had no obligation towards workers found guilty in a criminal court, it has resolved to find them alternative employment, if they so wish, once they are registered as jobseekers and able to present a “certificate of rehabilitation”. For the remaining five outstanding cases, this opportunity has not been seized; and (iv) examination and investigation of documents submitted by the GFBTU to meetings of the Joint Tripartite Committee has shown seven cases to be ordinary cases of dismissal to be dealt with as individual labour disputes (for example, disciplinary sanctions initiated before the events of February 2011) and/or with no link to the events of February 2011 in Bahrain. Therefore, it had been agreed to exclude them from the list of dismissed workers recognized under the Tripartite Agreement. Nevertheless, the Government has sought to help these workers and address their situation; accordingly, of these seven workers, one has resigned because of health reasons; one has accepted the offer of an alternative employment in the private sector; one has opted to become an employer and the Government has enabled him to obtain a commercial register; and four did not make use of the possibility to apply for an alternative employment. The Government therefore concludes that, pursuant to the above, all of the cases of workers dismissed in the wake of the events of February and March 2011 have been fully settled on the basis of cooperation at the national level between the social partners but affirms its readiness at all times to continue cooperation and its commitment to finding suitable, alternative employment for all those who so wish.

In this regard, the Committee notes the observations of the ITUC that not all dismissed workers have been fully reinstated in their jobs. According to the ITUC, 64 cases of dismissal related to the events of February 2011 are still pending because the employers refuse to reinstate those workers. The ITUC further affirms that the financial compensation of most reinstated workers has not yet been settled by their respective employers, despite the terms of the Tripartite Agreements in this regard, and that some employers have also declined to provide social insurance for their reinstated workers for the period they were dismissed. In this regard, the Committee notes that, in the list of 165 names attached to the Tripartite Agreement of March 2014, only 12 persons are mentioned as employees of the Ministry of Education. EI and the BTA state that many teachers who had been involved in the peaceful protests lost their jobs and livelihoods at that time and have still not been reinstated or received compensation. However, it is not clear from the statement of EI and the BTA whether some of the 120 teachers who lost their jobs, and are still awaiting reinstatement, were part of the Tripartite Agreements reached in 2012 and 2014. The Committee notes further that the GFBTU, which is a party to the Tripartite Agreements, did not send its observations confirming the full implementation of the abovementioned Agreements, as stated by the Government. It also notes that the Government itself ends its report on that issue, by indicating its readiness and commitment to continue cooperation to finding suitable, alternative employment for all those dismissed workers who so wish – implying that some cases have not yet been settled. ***Consequently, the Committee requests the Government to provide evidence that the cases of the 165 dismissed workers mentioned by name in the Annex to the Tripartite Agreement of March 2014 have been resolved to the respective satisfaction of the parties, that is, not only have the workers who so wish been reinstated or offered alternative employment, but also that they have received financial compensation and provision of social insurance coverage for the period of dismissal. Noting that workers who were convicted by judicial decisions could request assistance from the Ministry to find alternative employment on the condition that they register as jobseekers and are able to produce a “certificate of rehabilitation”, and that nine out of 18 have not made use of that opportunity, the Committee asks the Government to indicate what are the conditions to be fulfilled to obtain that certificate.***

The Committee notes the information communicated by EI and the BTA that, following the dismissal of a number of teachers involved in the peaceful demonstrations during the 2011 events, some 9,000 expatriates have been hired from other Arab States by the Ministry of Education and a two-tier teacher workforce has been established with expatriate teachers benefiting from better conditions than nationals. ***Noting that the Government has not provided its comments on the issues raised in that observation, the Committee invites the Government to provide its comments on these issues.***

**II. Ensure that legislation covers all recognized prohibited grounds of discrimination set out in Article 1(1)(a) of the Convention, in both direct and indirect forms, and undertake measures to ensure that discrimination in employment and occupation is prohibited in law and practice**

*Article 1(1)(a) and (3). Grounds of discrimination and aspects of employment and occupation.* The Committee recalls that, in its previous comments, it had noted that the Labour Law in the Private Sector of 2012 (Law No. 36/2012) does not apply to “domestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks” performing work for the employer or the employer’s family members (section 2(b)). It had further stressed that sections 39 (discrimination in wages) and 104 (termination considered to be discriminatory) of the Labour Law in the Private Sector do not include race, colour (only mentioned in section 39), political opinion, national extraction and social origin in the list of prohibited grounds of discrimination. The Committee notes that, although the Government recognizes that there is a lack of a comprehensive definition of all forms of discrimination in accordance with the Convention, it reiterates its previous explanation, that is: (i) in practice no mention of any actual violation of this principle has been reported in 2015 and 2016 (the Ministry receives more than 3,000 inquiries weekly and none alleges discrimination based on political opinion, gender, religion, etc.); (ii) private sector workers have at their disposal a number of mechanisms for lodging complaints and airing grievances (dispute settlement bodies, ministries, courts); and (iii) public sector workers are covered by Civil Service Instruction No. 16/2016 which prohibits discrimination based on gender, ethnicity, age or religion and have also at their disposal complaint procedures (internal committee, Civil Service Bureau, courts). Nevertheless, the Government indicates that it is ready to cooperate with the ILO to examine the possibility of formulating a comprehensive definition of discrimination in these two laws on the basis of international labour standards, in line with specific constitutional and legislative mechanisms and procedures. In this regard, the Committee wishes to reiterate that a clear and comprehensive definition of what constitutes discrimination in employment and occupation is instrumental in identifying and addressing the many manifestations in which it may occur (see General Survey on the fundamental Conventions, 2012, paragraph 743). It also wishes to stress that the lack of complaints is not an indicator of the absence of discrimination in practice. It is more likely to indicate the lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in, or the absence of, practical access to procedures, or fear of reprisals. The fear of reprisals is a particular concern in the case of migrant workers. **Recalling the Government’s statement that it is willing to examine with ILO technical support the possibility of formulating a comprehensive definition of discrimination in line with the Convention, the Committee reiterates its request to the Government to take the necessary steps to include in the Labour Law in the Private Sector of 2012 a definition of discrimination as well as a prohibition of direct and indirect discrimination that covers all workers, without distinction whatsoever, with respect to all grounds provided for in the Convention, including colour; with respect to all aspects of employment, including access to vocational training, access to employment and to particular occupations, and terms and conditions of employment, and to provide information on any developments in this regard. In addition, noting that Legislative Decree No. 48 of 2010 regarding the civil service does not include a prohibition of discrimination, the Committee asks the Government to take the necessary measures to ensure that public officials enjoy adequate protection in practice against direct and indirect discrimination in employment and occupation with respect to all grounds provided for in the Convention. In this regard, the Committee encourages the Government to consider including specific provisions in Legislative Decree No. 48 providing for comprehensive protection against discrimination in the civil service.**

**III. Ensure that migrant workers as well as domestic workers are included in the protection of anti-discrimination law**

*Article 3(c). Migrant workers.* In response to the Committee’s request to provide information on the specific measures adopted to ensure effective protection of all migrant workers, including migrant domestic workers, against discrimination based on the grounds set out in the Convention, including access to appropriate procedures and remedies, the Government reiterates the information provided previously regarding the protection of migrant workers in the country, including domestic workers, and states once again that no evidence of discrimination against migrant workers has emerged. The Committee notes, however, new information provided by the Government, namely that since mid-2017 a flexible work permit system was introduced to regularize the status of a large number of persons working informally in Bahrain, enabling them to benefit from social insurance, unemployment insurance and health-care systems. This new system allows a migrant worker working in unfair conditions to make an independent application for a personal permit enabling him or her to work without being bound to a particular employer, in accordance with the rules, and thus avoid exploitation. Workers are also guaranteed full access to legal protection. This system will allow a migrant worker to sign a temporary employment contract and still enjoy all the benefits and rights provided by the Labour Law in the Private Sector, including freedom to transfer from one employer to another.

With regard to migrant workers, the ITUC recalls that migrant workers constitute around 77 per cent of the workforce in Bahrain and they come primarily from Bangladesh, Egypt, India, Jordan, Kenya, Nepal, Pakistan, Philippines, Sri Lanka, Syrian Arab Republic, Thailand and Yemen. Migrant workers are represented in numerous sections of the economy, including domestic work (12.8 per cent of the Bahraini workforce and 42.2 per cent of the female workforce), construction and service industries. In its report, the ITUC confirms the introduction of a pilot scheme for a flexible work permit (FLEXI) for limited categories of migrant workers in an irregular situation (skilled workers and

workers who escaped abusive employers are not eligible, nor are domestic and agricultural workers). Accordingly, migrant workers in an irregular situation who are currently working in Bahrain are permitted to work without a sponsor provided that they cover certain costs, such as annual fees for work permits (US\$530), annual health care (US\$381) and a monthly social insurance fee (US\$80). In addition, these workers must provide a valid passport in order to apply for a permit. However, ITUC adds that migrants trapped in an irregular situation are generally not in possession of their passport due to confiscation by their previous employer. Further, it is not clear which law covers the employment contracts of “flexi” permit workers and how this impacts the labour protections afforded to them. As regards the right to change employer, the Committee notes the total number of approvals granted for transfer from one employer to another in 2015 (35,000) and 2016 (24,000). It also notes that according to the ITUC although the Government has repeatedly argued that migrant workers in Bahrain are not subject to the *kafala* system and may change employment without the permission of their sponsor, the Labour Market Regulation Authority continues to allow employers to include in their employment contracts a requirement limiting the approval of a transfer to another employer for a specified period.

With regard to domestic workers, the ITUC recalls that, except in the case of very few provisions, they are excluded from labour law coverage; thus they do not benefit from the labour law provisions on weekly rest days or from a limit on working hours (they can sometimes work up to 19 hours a day with minimal breaks and no day off); there is no stipulation of a minimum wage with the result that, employers can pay wages as low as US\$92 per month, averaging US\$186. The ITUC concludes by recalling that a number of reports indicate that female domestic workers are victims of physical abuse and sexual assault. *The Committee notes that the Government does not provide any information in this regard. The Committee therefore asks the Government to provide its comments on the ITUC’s allegations concerning the newly introduced “flexi-scheme” and the kafala system. In the meantime, the Committee reiterates its previous request to the Government to provide information on the specific measures adopted to ensure effective protection of all migrant workers, including migrant domestic workers, against discrimination based on all the grounds set out in the Convention. The Committee further asks the Government to ensure that any rules adopted to regulate the right of migrant workers to change employers do not impose conditions or limitations that could increase the dependency of migrant workers on their employers, and thus increase their vulnerability to abuse and discriminatory practices. The Committee asks the Government to provide information on the nature and number of cases, disaggregated by sex, occupation and country of origin, where the employer or the Labour Market Regulatory Authority did not approve of a transfer to another employer and on what basis. It also asks the Government to identify the specific steps taken or envisaged to raise awareness among both migrant workers and their employers of existing mechanisms to advance their claims to the relevant authorities. Further, the Committee asks the Government to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, and to identify and address cases of discrimination.*

#### IV. Ensure equality of opportunity and treatment in employment of women

*Article 2. Equality of opportunity and treatment between women and men.* In its previous comments, the Committee had requested that the Government continue to provide information on the measures taken by the Supreme Council of Women (CSW) and other relevant authorities, including within the framework of the National Plan for the Advancement of Bahraini Women (2013–22) to promote the principle of equal opportunity between men and women, such as specific examples of legislative reforms undertaken or envisaged, as well as information on their impact on the employment opportunities for women including in areas traditionally dominated by men. It had also requested that the Government continue to provide statistical information on the participation of men and women in the labour market, disaggregated by sector, occupational categories and positions in both the public and private sectors, and the numbers of women and men respectively benefiting from vocational training. In its report, the Government recalls that Bahraini women began working in the private sector in the 1950s and, that by the 1960s, they had begun acquiring commercial registration and entering the world of business. According to the statistics provided, in 2016 women represented 32.8 per cent of the total Bahraini workforce and their average wage increased from 465 Bahraini dinar (BHD) (US\$1,232) in 2011 to BHD521 (US\$1,381) in the second quarter of 2016. As of August 2016, Bahraini women held 39 per cent of individual commercial registrations. In the private sector, Bahraini women occupy leadership positions, such as executive president, chair and membership in boards of directors. In 2014, four women were elected to the board of the BCCI, of which they constitute 22 per cent of the membership. Furthermore, Bahraini women have begun to enter new areas of employment with which they were not previously associated: for example, becoming taxi drivers, driving instructors and jewellers. According to the Government, these indications demonstrate that women make up approximately 50 per cent of all those working in public and private sector education. With regard to the CSW, the Committee notes that, in coordination with the CSW, 45 equal opportunity committees have been formed in government bodies with the aim of incorporating women’s needs within the equal opportunity framework in all areas of employment and achieving equality of opportunity between all employees and between all beneficiaries of government services. The equal opportunity committees are responsible for formulating guidelines, criteria and plans relating to the application of the principle of equal opportunity, monitoring full incorporation of women’s needs within the equal opportunity framework, and for providing advice. The Committee notes that the Ministry of Labour and Social Development has launched a number of initiatives designed to encourage the employment of women and promote ways of incorporating them in the labour market. These initiatives include, among others, promoting the recruitment of women by offering financial support equivalent to 50 per cent of the

monthly wage for a period of two years; creating women-only vacancies; providing training programmes for women in specializations required by the labour market; holding job fairs specifically designed to recruit women; granting companies and employers extra benefits for recruiting women and promoting their presence in the labour market; recognizing a woman's right to work part time (four to six hours daily), while enjoying all the rights and benefits set out in the Labour Law in the Private Sector and other laws, ensuring an annual leave entitlement, social insurance, healthy working conditions, etc. The Government states that, in addition to enjoying the full protection and benefits determined by the Labour Law in the Private Sector, the legislation grants a woman maternity leave (increased to 60 days with pay, instead of 45 days under the previous law), unpaid leave to look after her infant child under the age of 6 years (this is a new leave that did not exist under the previous law) and one month's paid leave in the event of the death of her husband. In this regard, the Committee is of the view that, in order to avoid reinforcing stereotypes regarding the role of women and men in society and in the family, some of the measures mentioned above (a woman's right to work part time, unpaid leave to look after a child under the age of 6 years or one month's paid leave in the event of the death of the husband of a woman worker) should be extended to men also. ***Noting that the Government's report provides ample information on steps taken to promote the principle of equal opportunity between men and women in employment and occupation, the Committee asks the Government to provide information on the impact of each of these measures on increasing the number of women in leadership positions and their situation in the labour market, in particular in areas traditionally dominated by men. The Committee also asks the Government to continue to provide statistical information on the participation of men and women in the labour market, disaggregated by sector, occupational category and position in both the public and private sectors, and the numbers of women and men respectively benefiting from vocational training.***

*Article 5. Special measures of protection.* In its previous comments, the Committee referred to section 31 of the Labour Law on the Private Sector related to work prohibited for women and requested that the Government take the necessary measures to ensure that protective measures applicable to women are limited to maternity protection in the strict sense. In this regard, the Committee noted the adoption of Ministerial Order No. 32 of 2013 which prohibits women's employment in certain sectors and occupations, including underground work, work involving exposure to high temperatures or dangerous vibrations, work requiring great or continuous physical efforts, and work involving the use or manufacturing of lead (section 1). The Committee also noted that Order No. 16 of 2013 regarding occupations in which, and circumstances under which, employing women at night is prohibited. The Order specifies the industrial establishments where women may not be employed at night, such as: sites where materials are manufactured, destroyed and converted; shipbuilding sites; sites of electric jobs (generating, transferring or coupling) and sites of construction projects and civil engineering. The Committee notes that in its report, the Government reiterates its previous explanation that these specific measures are aimed to protect women from jobs which are against their dignity, capacities and constitution. While noting the Government's willingness to explore the possibility of including any legislative or regulatory amendments to the law, the Committee once again recalls that protective measures applicable to women's employment, which are based on stereotypes regarding women's professional abilities and role in society, violate the principle of equality of opportunity between men and women in employment and occupation enshrined in the Convention. 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 (see General Survey, 2012, paragraph 840). ***Consequently, the Committee once again urges the Government to take steps to ensure that protective measures applicable to women are limited to maternity protection in the strict sense, and to repeal or withdraw any provisions that constitute an obstacle to the recruitment and employment of women, such as Ministerial Order No. 16 of 2013 and section 1 of Order No. 32 of 2013. It asks the Government to provide information on the specific steps taken or envisaged in this regard. The Committee further asks the Government to identify the specific measures adopted to ensure that all workers, both men and women, working under hazardous or difficult conditions, are adequately protected.***

***V. Ensure sexual harassment is prohibited in the labour legislation and provide information regarding how complaints of this nature may be advanced***

The Committee recalls that it had referred to the need to define and prohibit, expressly, sexual harassment in employment and occupation encompassing both quid pro quo and hostile environment harassment. In its report, the Government stresses that no cases of sexual harassment in the workplace have been reported and no complaints of this type have been registered by the Ministry of Labour and Social Development or other relevant bodies. In addition, it refers to sections 81 and 107(7) of the Labour Law in the Private Sector and item 33 of the Schedule of fines and penalties in Instructions No. 12 of the Bureau of the Civil Service of 2007. The Committee notes once again that these provisions do not provide a clear definition of sexual harassment but prescribe the sanctions in cases of serious misconduct, thus: (i) section 81, allows the employer to temporarily suspend a worker "if an offence or a misdemeanour prejudicing honour, trust or public ethics or an offence within the labour department is attributed to the worker"; (ii) section 107 allows the employer to terminate the labour contract without notice or compensation if a final judgment has been entered against the worker for an offence or a misdemeanour prejudicing honour, trust or public ethics or if the worker "has committed an immoral act at the workplace"; (iii) item 33 of the Schedule of fines and penalties provides for a preliminary written warning of dismissal from the public service, in the case of an assault or verbal or physical sexual harassment. The

Committee wishes to emphasize that, without a clear definition and prohibition of sexual harassment in employment, it remains doubtful whether the legislation effectively addresses all forms of sexual harassment, both *quid pro quo* and hostile working environment (see General Survey on the fundamental Conventions, 2012, paragraph 791). The Committee also points out that the absence of reported cases on sexual harassment, as stated by the Government, 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, workers and employers and their organizations, as well as a lack of access to, or the inadequacy of, complaints mechanisms and means of redress, or a fear of reprisals (see General Survey on the fundamental Conventions, 2012, paragraph 790). ***Recalling once again that sexual harassment is a serious manifestation of sex discrimination and a violation of human rights, and that addressing sexual harassment through criminal proceedings only is not sufficient (due to the sensitivity of the issue, the more onerous burden of proof, and the limited range of behaviours addressed), the Committee once again urges the Government to take steps to formally prohibit in the civil or labour law both quid pro quo and hostile environment sexual harassment and to provide remedies and dissuasive sanctions. It also asks the Government to take practical measures to prevent and address sexual harassment in employment and occupation, and to provide detailed information in this regard. Noting that the Government affirms its readiness to take advantage of ILO technical support, the Committee urges the Government to avail itself of the technical assistance of the Office.***

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

## Barbados

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)***

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* In previous comments, the Committee noted the absence of a legislative framework supporting the right to equal remuneration for men and women for work of equal value. Having noted also that the existing mechanisms for collective bargaining and wage councils for wage determination did not seem to promote and ensure effectively this right, the Committee requested the Government to take measures to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee notes from the Government's report on Discrimination (Employment and Occupation) Convention, 1958 (No. 111) that the draft National Gender Policy, which includes a section on employment, is currently being reviewed by the relevant ministries but that the Employment (Prevention of Discrimination) Bill is yet to be adopted. The Committee once again recalls the particular importance of capturing in legislation the concept of "work of equal value" in order to address the segregation of men and women in certain sectors and occupations due to gender stereotypes. ***In light of the ongoing legislative and policy developments on gender equality and non-discrimination, the Committee asks the Government to take the necessary measures to ensure that the principle of equal remuneration for men and women for work of equal value will be fully reflected in the National Gender Policy and in the Employment (Prevention of Discrimination) Bill, and to provide a copy of the policy and the new legislation, once adopted.***

*Gender earnings gap and occupational segregation.* The Committee notes from the statistics published by the Barbados Statistical Service (Labour Force Survey) that of all women employed in 2015, 52.4 per cent earned less than 500 Barbadian dollars (BBD) per week compared to 41.8 per cent of all men employed in that same year. Among those earning between BBD500 and BBD999 per week, men represented almost 56 per cent and women only 44 per cent. Among those earning between BBD1000 to BBD1,300 women represented 46.6 per cent and men 53.1 per cent. Men also account for a little more than half of the workers (52.5 per cent) in the highest earnings group (over BBD1,300). The Committee further notes from the Labour Force Survey data for 2015 the persistent occupational gender segregation of the economy with women mostly employed as service workers and clerks while men are mostly employed as craft and related workers or plant and machine operators. When looking at economic sectors, women workers are highly represented in "Accommodation and Food Services", and their numbers sometimes more than doubles or triples the number of male workers in "Finance and Insurance", "Education" and "Human Health and Social Work". Women are also over-represented among household employees. In contrast, men largely predominate in the "Construction" and "Transportation and Storage" sectors. The Committee further refers to its comments on Convention No. 111. ***The Committee asks the Government to take measures to reduce the earnings gap between men and women and to increase the employment of women in jobs with career opportunities and higher pay. Recalling that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee also asks the Government to provide information on the results achieved under the National Employment Policy and the National Gender Policy, once adopted, to address occupational gender segregation and to increase the employment of women and men in sectors and occupations in which they are under-represented.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)***

*Articles 1–3 of the Convention. Legislative protection against discrimination.* The Committee had previously noted that the Employment Rights Act 2012, while protecting workers against unfair dismissal on all the grounds

enumerated in *Article 1(1)(a)* and certain additional grounds under *Article 1(1)(b)* of the Convention, did not ensure full legislative protection against both direct and indirect discrimination for all workers in all aspects of employment and occupation. The Committee previously asked the Government to address the protection gaps in the legislation. The Committee notes that the Government in its report merely restates the constitutional provisions on equality, and the protections afforded by the Employment Rights Act 2012. The Government also maintains that no distinctions, exclusions, or preferences based on the prohibited grounds set out in *Article 1(1)(a)* or on any additional grounds determined in accordance with *Article 1(1)(b)* exist in the country, and that no discrimination cases have been reported. Regarding the presumed absence of discrimination, the Committee considers that it is essential to acknowledge that no society is free from discrimination, and that continuous action is required to address discrimination in employment and occupation, which is both universal and constantly evolving (see General Survey on the fundamental Conventions, 2012, paragraphs 731 and 845). ***Noting that the Employment (Prevention of Discrimination) Bill 2016 is still in draft form, the Committee urges the Government to take steps, without further delay, to address the protection gaps in the legislation, and to ensure that the anti-discrimination legislation expressly defines and prohibits direct and indirect discrimination in all aspects of employment and occupation, for all workers, and on all the grounds set out in the Convention. The Committee also repeats its request to the Government to provide information on the steps taken to ensure that all workers are being protected in practice against discrimination not only with respect to dismissal but with respect to all aspects of employment and occupation, on the grounds set out in the Convention. Such measures could include public awareness raising aimed at, or in cooperation with, workers and employers and their organizations, or the development of codes of practice or equal employment opportunities guidelines to generate broader understanding on the principles enshrined in the Convention. Noting with regret that for several years the Government has not provided any information on the action taken to promote and ensure equality of opportunity and treatment with respect to race, colour and national extraction, and to eliminate discrimination in employment and occupation on these grounds, the Committee urges the Government to provide such information without delay, including any studies or surveys on the labour market situation of the different groups protected under the Convention.***

*Article 1(1)(a). Discrimination on the grounds of sex. Sexual harassment.* The Committee previously noted the absence in the Employment Rights Act 2012 of provisions protecting workers against sexual harassment. The Committee notes the Government's indication that the proposed Sexual Harassment in the Workplace Bill will define and prohibit both quid pro quo and hostile environment sexual harassment and provide for a tribunal to hear complaints and determine matters related to sexual harassment. ***The Committee urges the Government to take steps to ensure that the draft Sexual Harassment in the Workplace Bill is adopted speedily and that it will define and prohibit sexual harassment (both quid pro quo and hostile environment harassment) in all aspects of employment and occupation, and asks that the Government provide a copy of the latest version of the Bill, or as enacted, with its next report.***

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

## Belgium

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1952)**

*Articles 1 and 2 of the Convention. Pay gaps and their causes. Measures to address the remuneration gap.* The Committee notes with *interest* the annual publication by the Institute for the Equality of Women and Men (IEFH) since 2007 of the "Report on the pay gap between women and men in Belgium", which provides a comprehensive overview of the wage situation of men and women, evaluates in detail wage gaps, particularly by economic sector and working time, analyses their causes and makes a number of recommendations to remedy them. According to the 2017 report, the average gross gender wage gap in hourly wage rates was 7.6 per cent in 2014 and the average gross annual gender wage gap was 20.6 per cent. The Committee notes that the report identifies several factors underlying wage gaps, some of which are linked to the situation of women and men in the labour market (occupational segregation – by occupation and sector), while others are related to the personal characteristics of workers (training, work experience, seniority) or the individual (marital status, household composition). The report emphasizes that 48.2 per cent of the wage difference can be explained by known factors; and 51.8 per cent remains unexplained, part of which is due to direct discrimination. The Committee also notes that the report recommends the Government to take the following measures: increase the participation of women in employment; reduce involuntary part-time employment; enhance the capacities of the labour inspectorate with regard to discrimination in enterprises; strengthen the collection and processing of statistical data; improve the balance between professional and family life; continue to encourage the representation of women in decision-making bodies in enterprises (between 2011 and 2016, the proportion of women on executive boards rose from 11 to 28 per cent); and combat occupational segregation, and more specifically, gender stereotypes in education, training and vocational guidance. ***In light of the persistent gender wage gap, the Committee asks the Government to provide information on the specific measures taken to address wage inequalities, including on the measures taken with regard to vocational training and guidance to combat prejudice and sexist stereotypes and on measures taken to combat involuntary part-time work.***

*Development and application of legislation.* The Committee notes the adoption of the Act of 12 July 2013 amending the legislation to combat the gender wage gap, which amends, inter alia, the Act of 22 April 2012 to address the

wage gap by adding provisions on the supervision carried out by the General Directorate of Collective Labour Relations with regard to the gender neutrality of the sectoral classifications of jobs, and the adoption of the Order of 17 August 2013 on the same subject. Regarding the measures taken at the enterprise level, the Committee also notes the adoption of two Royal Orders of 25 April 2014 on the report to analyse the pay structure of workers (on the basis of which an action plan can be adopted) and on mediators to combat wage gaps (who can be appointed by the employer in enterprises with over 50 employees). With regard to the implementation of the Act of 22 April 2012 to address the wage gap, the Committee notes with *interest* the creation of a task force comprising members from the IEFH, and the Federal Public Employment, Labour and Social Dialogue Service, which meets several times a year to review the situation, coordinate the various actors and carry out awareness-raising activities, particularly for employers, workers and their respective organizations. The Government indicates that, in February 2015, the task force organized a symposium to present the Act of 2012, which gave rise to great interest. ***The Committee requests the Government to provide information on the preparation of the report analysing the pay structure of workers, including on the adoption of the associated action plans, and on the appointment in practice of mediators to combat the wage gap in enterprises, with an indication of the results obtained. It trusts that the Government will take measures to enable the task force to step up its awareness-raising and information activities for the social partners and all persons involved in combating the gender wage gap.***

*Articles 2(2)(c) and 3(2). Collective agreements. Revision of job classifications at the sectoral level. Job evaluation.* The Committee welcomes the detailed explanations provided by the Government on the process involved in and the results of the first assessment exercise carried out between 2014 and 2015 with the help of an evaluation tool comprising 12 questions based on criteria considered as “good practices” aimed at promoting gender neutrality (objectivity of the system chosen – analytical method; focus on prejudice and gender stereotypes during the process; objectivity of the collection of information on job content, etc.). The Committee notes that, according to the Government, most of the classifications verified were considered to be gender neutral, and for the remaining classifications, the joint committees have a two-year time frame to make the necessary changes. The Government adds that, if corrective action is not taken within the specified time frame and there is no other justified reason, the joint committee in question is placed on a list that is referred to the Ministry of Employment and the IEFH. The Committee recalls that the undervaluation of jobs viewed as “feminine”, and even the lack of recognition, is one of the causes of the persistent gender pay gap. ***Emphasizing the importance of reviewing occupational classifications in light of the principle of equality to effectively combat the undervaluation of certain jobs, and thereby to give effect to the principle of equal remuneration for men and women for work of equal value, the Committee requests the Government to continue providing information on the results of the assessment exercises carried out since 2015 in terms of the gender neutrality of classifications, and on the measures taken when assessments have found that classifications are not neutral.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)***

*Article 1(1)(a) of the Convention. Discrimination on the basis of sex and/or gender. Sexism, harassment based on sex and sexual harassment. Violence.* The Committee notes that in 2015 the Institute for the Equality of Women and Men (IEFH) received 36 reports of sexual harassment (in comparison with six in 2014) and 74 of sexism (in comparison with 58 in 2014). The Committee notes with *interest* the adoption of the Act of 22 May 2014 to combat sexism in public places and amending the Act of 10 May 2007 to combat gender discrimination with a view to criminalizing discrimination. The Committee notes that the Act establishes a prison sentence and/or a fine in the case of discrimination in the field of labour relations. It also welcomes the publication and dissemination by the IEFH of an awareness-raising and information leaflet on this subject. With regard to sex-based harassment and sexual harassment, the Committee also notes with *interest* the adoption of: (i) the Act of 28 February 2014 supplementing the Act of 4 August 1996 on the welfare of workers in the performance of their work, in relation to the prevention of psychosocial risks in the workplace, including violence, harassment or sexual harassment at work; and (ii) the Act of 28 March 2014 amending the Judicial Code and the Act of 4 August 1996 on the welfare of workers in the performance of their work, in relation to judicial procedures. These Acts strengthen prevention measures, define the roles of all the stakeholders (employers, workers, line managers, occupational prevention and protection committees, prevention advisers, and trusted persons) and specify the internal procedures available to workers for seeking psychosocial assistance. The Committee welcomes the implementation of a national campaign from 2012 to 2014 for the prevention of all psychosocial risks, the evaluation of which has revealed that its various target populations have acquired a better knowledge of these risks. ***The Committee asks the Government to provide information on any measures adopted at the national, regional and enterprise levels under the Acts of 2014 to address and eliminate sexism, sex-based harassment, sexual harassment and violence in employment and occupation, with an indication of the extent to which workers’ and employers’ organizations participate in the formulation and implementation of these measures. The Committee also asks the Government to continue providing information on any complaints or cases of sexual harassment in the workplace handled by the IEFH, the labour inspectorate or the courts, and on the outcome of these complaints.***

*Pregnancy and maternity.* The Committee notes that the proportion of reported cases of discrimination on grounds of pregnancy have been high for several years and recalls that it asked the Government to take measures to prevent and eliminate this type of discrimination in employment and occupation. The Government reports that, in the context of the

supervision of social legislation (labour inspection), pregnancy and/or maternity are rarely the subject of complaints. However, the Committee notes that, according to the 2016 IEFH interim report, the total number of reports received of discrimination based on sex and/or gender increased again in 2016 (by 18 per cent from 2015), and in particular the number of complaints increased by 49 per cent. The majority of reports are from women (59 per cent) and concern discrimination in employment, and more than a third (39 per cent) of complaints and requests for information in the context of employment received by the IEFH in 2015 were in relation to pregnancy. Furthermore, according to the IEFH study “Pregnancy and maternity at work: Experiences of women candidates and workers and self-employed women in Belgium”, three out of four women workers have faced at least one form of discrimination, prejudice, unequal treatment or stress at work as a result of pregnancy or maternity. In this respect, the Committee welcomes the launch in October 2017 by the IEFH of an awareness-raising campaign on discrimination related to pregnancy and maternity, known as “Mum’s staying on board”, which included the dissemination of an information guide “Pregnancy at work. A guide for women workers and for employers for treatment free of discrimination” and the organization of a study day on the subject in November 2017. ***The Committee asks the Government to provide information on the action taken following the findings of the IEFH study “Pregnancy and maternity at work”. In view of the scale of the problem, the Committee asks the Government to continue to support and implement practical initiatives to prevent and eliminate discrimination on the basis of pregnancy and maternity, particularly by strengthening labour inspections, and undertaking information and awareness-raising steps for men and women workers, employers, their respective organizations and the general public. The Government is also asked to continue providing information on the cases of discrimination examined by the IEFH, the labour inspectorate and the courts and on the outcome of any court proceedings, identifying the penalties imposed and the compensation awarded.***

## Botswana

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)***

The Committee notes that the Government’s report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Article 1 of the Convention. Equal remuneration for men and women for work of equal value. Legislation.* The Committee recalls that the principle of equal remuneration for work of equal value is not reflected in the national legislation, but that since 2002 the Government has been indicating that amendments to the Employment Act were under consideration with a view to incorporating the provisions of the Convention. The Committee had therefore asked the Government to ensure that full legislative expression be given to the principle of equal remuneration for men and women for work of equal value in the Employment Act of 1982. It had noted that the most recent amendment to this Act in 2010 still did not incorporate this principle. The Committee notes that the Government once again indicates in its report that the process of amending the Employment Act of 1982 has started, and that this process will incorporate provisions on the principle of equal remuneration for men and women for work of equal value. ***In light of the above and with a view to ensuring that men and women have a legal basis for asserting their right to equal remuneration with their employers and before competent authorities, the Committee urges the Government to take, without further delay, the necessary measures to ensure that substantial progress will be made in the revision of the Employment Act, and that the Act, once revised, will give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee asks the Government to provide information on the status of the revision process, including on any specific action taken to amend the law in accordance with the Convention.***

*Article 2. Minimum wages.* The Committee recalls that the Minimum Wage Advisory Board is competent to submit recommendations to the Minister to fix or adjust wages in all sectors of activity under section 132 of the Employment Act of 1982, and that it has requested the Government to ensure that the principle of equal remuneration for men and women for work of equal value is taken into account by the Minimum Wage Advisory Board and is fully reflected in the minimum wage setting process. The Committee notes that the Government once again merely indicates that the process of amending the Employment Act of 1982 has started. ***Recalling that 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, the Committee trusts that the Government will take the necessary measures to ensure that the principle of equal remuneration for men and women for work of equal value is taken into account by the Minimum Wage Advisory Board and fully reflected in the minimum wage setting process, and asks the Government to provide full information on any steps taken in this regard.***

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

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

## Brazil

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)***

The Committee notes the observations of the National Confederation of Industry (CNI) received on 31 August 2017, of the International Organisation of Employers received on 1 September 2015 and 31 August 2017, of the Union of Doctors in the State of Bahia (SINDIMED-Ba) received on 1 August 2014 as well as the Government’s reply on this last observation received 5 January 2015.

*Articles 1–3 of the Convention. Legislative developments.* Noting that in 2011 there were 6.65 million domestic workers in Brazil, 92.6 per cent of whom were women, the Committee notes with *interest* the adoption of the Supplementary Act No. 150 of 2015 which provides specific measures for the implementation of the 2013 Amendment of

the Constitution and expands the scope of protection of domestic workers' rights in line with the protection afforded to other workers. The Committee also welcomes the adoption by congress of the Draft Legislative Decree No. 627/2017, which approves the texts for internalization of the Domestic Workers Convention, 2011 (No. 189) and the Domestic Workers Recommendation, 2011 (No. 201). The Committee further notes Decree No. 8.136 of 5 November 2013, which regulates the National System for the Promotion of Racial Equality (SINAPIR), created by the Racial Equality Statute to oversee the implementation of services, programmes and policies in the country to effectively overcome racial inequality. The Committee also notes that the Decree foresees that entities which join the SINAPIR must provide resources to implement racial equality policies and, as reported by the Government in the framework of the UN Human Rights Council's Universal Periodic Review, by July 2016, 43 racial equality agencies from all regions had joined the SINAPIR (A/HRC/WG.6/27/BRA/1, 27 February 2017).

With regard to the Bill on Equality and the Elimination of Discrimination, the Committee notes the Government's statement that, in spite of the efforts of the Secretariat for Women's Policies and other bodies of the federal government to speed up the legislative process, disagreements concerning the content of the law continue to hinder its adoption. The Committee notes further the Government's indication that the Bill on Equal Opportunities and Treatment for Women in Employment (PLS No. 136/2011) is currently being considered by the Senate commission for economic affairs. The draft law establishes mechanisms to prevent, address and punish discrimination against women, and sets out measures to promote equal opportunities for women in employment and career development. ***The Committee asks the Government to provide information on any progress made in the adoption of the Bill on Equality and the Elimination of Discrimination, as well as the Bill on Equal Opportunities and Treatment for Women in Employment (PLS No. 136/2011). The Committee also asks the Government to provide information on the practical impact of Act No. 150 of 2015 on the elimination of discrimination against domestic workers and on the promotion of equality, and on the implementation and impact of SINAPIR.***

*Equality of opportunity and treatment irrespective of race, colour and ethnicity.* The Committee notes the observations of SINDIMED-Ba concerning an alleged dismissal on the grounds of race and colour. It also notes the Government's reply to SINDIMED-Ba's observations referring to the national legal framework prohibiting discrimination in employment and occupation on the abovementioned grounds and indicating the availability of judicial remedies. The Committee also takes note of the statistical information, disaggregated by race, colour and sex provided by the Government. The figures show that earnings by those who declare themselves as Black (*Preto*) had the highest increases in 2013 at 4.80 per cent, above those who declare themselves of mixed-race (*Pardo*) or White (*Blanco*). The statistical information submitted further indicates that Black, indigenous and mixed-race workers continue to receive lower wages than White workers, with Black women being the most affected by the wage gap. ***While noting these statistics and the information previously provided by the Government on measures and activities undertaken in the context of plans and programmes at both national and state levels to combat discrimination on the basis of race, colour or ethnicity, the Committee asks the Government to step up its efforts to combat discrimination on the basis of race, colour or ethnicity, and to actively promote equality in employment and occupation. In particular, the Committee asks the Government to provide information on the concrete impact of measures adopted in the context of the National Plan for Racial Equality, the Ethno Programme for the development of Quilombola communities, or otherwise, and the concrete results obtained in this regard. The Committee also asks the Government to continue to provide statistics, disaggregated by sex, race and colour, and the combined effects of sex and ethnicity on the distribution and participation of workers in the various occupations and economic sectors, including on their remuneration rates.***

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

## Burundi

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)***

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), which were received on 26 November 2015.

*Article 1(a) of the Convention. Definition of remuneration. Legislation.* The Committee recalls that, under section 15(f) of the Labour Code, family allowances, benefits in kind, housing benefits, travel costs and other benefits are not considered as forming a part of wages or remuneration. It also recalls that, in order to ensure the application of the principle of equal remuneration for men and women for work of equal value, the definition of remuneration established by the Convention is to include all elements that workers may receive in exchange for their work and arising from their employment, regardless of whether the employer pays in cash or in kind and directly or indirectly. ***Noting the Government's indication that it is in the process of revising the Labour Code, the Committee requests the Government to take this opportunity to extend the definition of "remuneration" to bring it into line with Article 1(a) of the Convention, in order to apply the principle of equal remuneration established by the Convention. The Committee requests the Government to provide information on all progress made in this respect.***

Furthermore, the Committee previously pointed out that the designation of the husband as head of the household could have an adverse impact on the payment to women of employment-related benefits, such as family allowances. Noting that the Government's report does not contain any information on this point, the Committee observes the

Government's indication, in its report to the United Nations Committee on the Elimination of Discrimination against Women, that a preliminary draft Code of Personal and Family Rights is under examination (CEDAW/C/BDI/5-6, 17 June 2015, paragraph 36). **The Committee asks the Government to examine the possibility, as part of the review of the Code of Personal and Family Rights, of removing the obstacles to equality between men and women, particularly regarding the payment of employment-related benefits.**

*Article 1(b). Equal remuneration for work of equal value. Legislation.* The Committee recalls that article 57 of the Constitution provides that "all persons with equal skills shall have the right, without discrimination, to equal wages for equal work" and section 73 of the Labour Code provides that "with equal conditions of work, vocational qualifications and performance, wages shall be equal for all workers, regardless of their origin, sex or age". As the Committee has emphasized several times, these provisions do not give full effect to the principle of equal remuneration for work of equal value laid down in *Article 1(b)* of the Convention. In this regard, the Committee notes that COSYBU, in its observations, reiterates its previous observations to the effect that, as requested by the Committee, section 73 of the Labour Code should be amended to fully reflect the principle of the Convention. The Committee notes the Government's indication that the Labour Code is being revised and that the social partners, including COSYBU, have drawn the attention of the committee responsible for proposing amendments to the fact that section 73 needs to be amended to incorporate the concept of work of equal value. In this regard, the Committee recalls that 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. It is essential to combating gender-based occupational segregation, since it allows for a broad comparison and includes but goes beyond equal remuneration for "equal", the "same" or "similar" work and also encompasses work of an entirely different nature which is nevertheless of equal value. The Committee has previously found that referring in the law to factors such as "equal conditions of work, skill and output" can be used as a pretext for paying women lower wages than men (see the General Survey on the fundamental Conventions, 2012, paragraphs 672–675). **Having raised this issue for many years, the Committee trusts that the Government will take the opportunity provided by the revision of the Labour Code to amend section 73 so as to incorporate the principle of equal remuneration for work of equal value. In addition, the Committee invites the Government to contemplate the possibility of amending article 57 of the Constitution when the Constitution is next revised in order to reflect the concept of "work of equal value".**

*Occupational segregation and gender pay gaps.* The Committee notes the Government's indication in its report that remuneration is fixed according to the qualifications and post concerned and that a wage policy is being formulated which aims to resolve wage disparities by harmonizing aspects of gender, occupation, posts, grades and wages. It also notes the Government's indication in the National Employment Policy 2015 that women have a major presence in low-productivity jobs and underpaid posts and therefore have a minor presence in high-productivity occupations or professions, resulting in their income being lower than that of men. The Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations, expressed concern at inequality in the employment sphere and at significant wage gaps (E/C.12/BDI/CO/1, 16 October 2015, paragraph 19). **The Committee requests the Government to take steps to combat occupational segregation between men and women, particularly the predominance of women in low-productivity or underpaid jobs, including by combating stereotypes regarding the roles of men and women and encouraging women to participate in initial or further training. It also requests the Government to provide statistics, disaggregated by sex, on the distribution of men and women in the various sectors of the economy, including the public sector, and on the corresponding levels of pay.**

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** **(ratification: 1993)**

The Committee notes the observations on the application of the Convention made by the Trade Union Confederation of Burundi (COSYBU), which were received on 26 November 2015.

*Article 1(1)(a) of the Convention. Discrimination on the basis of sex or gender. Gender-based violence.* The Committee notes with **interest** the adoption of Act No. 1/13 of 22 September 2016 concerning the prevention and suppression of gender-based violence and victim protection, which defines and punishes, inter alia, the concept of gender-based violence, including sexual violence, sexual harassment, gender-hostile traditional practices and economic violence, which is defined as denying a spouse access to family resources or forbidding a spouse to work. The Committee also notes that, under section 14, any employees who are victims of gender-based violence in or outside the workplace have the right, at their request and subject to a doctor's approval, to a temporary reduction or reorganization of hours of work, to a geographical transfer, to assignment to another workplace, to the suspension of their employment contract (following which employees can resume their contracts) and to resignation without notice. In this respect, the Committee would like to draw the Government's attention to the fact that resignation with or without notice must not be used in practice as the only means of ending the violence and obtaining compensation but rather should be a last resort since this would amount to punishing the victims through the loss of their jobs (double penalty). The Committee notes that Act No. 1/13 also provides that "any employer who violates the rights of a person on the basis of his/her sex which are set down in the Labour Code and its implementing regulations, shall be liable to a fine of 500,000 to 1 million Burundian francs". **The Committee asks the Government to provide information on the following points:**

- (i) *the implementation and application in practice of Act No. 1/13 of 22 September 2016 with regard to employment and occupation, indicating the number and type of cases of gender-based violence dealt with by the labour inspectorate and the courts and also the penalties imposed;*
- (ii) *the steps taken or contemplated to inform and raise the awareness of employers, workers and their respective organizations, labour inspectors, judges and also the general public as regards action against gender-based violence, including the steps taken to publicize the content of Act No. 1/13; and*
- (iii) *the activities of the Independent National Human Rights Commission (CNIDH) against gender-based violence in employment.*

*In addition, the Committee asks the Government to indicate whether it envisages carrying out an inventory of laws that are discriminatory towards women in order to bring them into line with the Constitution and ratified international instruments, as recommended by the CNIDH.*

*Sexual harassment.* The Committee recalls that section 563 of the Penal Code, as amended in 2009, includes a provision defining sexual harassment as “the act of subjecting another person to orders, threats or physical or psychological coercion, or serious pressure, with a view to obtaining favours of a sexual nature by abusing the authority inherent in his or her functions”, but does not cover either hostile work environment sexual harassment or acts committed by a work colleague or a person connected to the job (such as a customer or supplier). The Committee notes that Act No. 1/13 of 2016 defines sexual harassment as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, whether between equals or in a hierarchical situation; the act of subjecting another person to orders, threats or physical or psychological coercion, or serious pressure, with a view to obtaining favours of a sexual nature by abusing the authority inherent in his or her functions”. The Committee observes that this definition covers more forms of sexual harassment, including sexual harassment by a person who has no hierarchical connection with the victim. However, it notes that this definition does not cover the concept of a hostile, offensive or humiliating work environment created by certain forms of conduct with sexual connotations. *While noting in particular the progress achieved through the adoption of Act No. 1/13 of 2016, the Committee asks the Government to examine the possibility of expanding the definition of sexual harassment by adding the notion of a hostile, offensive or humiliating work environment, and asks it, in the absence of any specific provision towards this end in the Act of 2016, to specify the procedure to be followed and the penalties that apply in cases of sexual harassment. The Committee also asks the Government to provide information on the practical steps taken to prevent and eliminate sexual harassment in the public and private sectors, including measures designed to raise the awareness of employers, workers and their respective organizations with regard to the prevention and treatment of sexual harassment.*

*Article 2. Equality of opportunity and treatment for men and women.* The Committee notes that, according to the National Employment Policy Paper of 2014, some progress has been made on equality but profound inequalities persist in terms of access to initial employment and to managerial posts and as regards conditions of work. These inequalities are due to various forms of discrimination and the social distribution of labour and the exclusive role of women in the area of childcare and domestic tasks. In this regard, the Committee notes that the National Employment Policy states that it will be necessary to encourage enterprises to take steps to achieve a better balance between work and family life and to improve women’s access to productive resources. It also provides for the possibility of establishing a 30 per cent quota for women at all hierarchical levels in the public and semi-public administration on a trial basis, and also for the use of anonymous employment resumés and the promotion of vocational training.

The Committee further notes that Act No. 1/13 of 2016 provides that the Government must formulate and implement a gender policy, submit a report on its implementation to the National Assembly (sections 3 and 4) and adopt awareness-raising measures to “modify structures and models of sociocultural behaviour for men and women to eliminate customary or other practices based on the notion of the inferiority or superiority of either sex or stereotypical roles of men or women” (section 5). The Act establishes the obligation for parents or any other persons in charge of children to give equal treatment to boys and girls in all aspects of life and to protect them against any gender-based violence (section 8). Public authorities must take steps to give girls and boys equal access to education, and school directors must ensure that single mothers’ right to education is respected. In this regard, the Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations, welcomed the measures adopted by Burundi to increase the school enrolment and retention rates for girls, including the adoption of a policy on the reintegration of girls into school after pregnancy (CEDAW/C/BDI/CO/5-6, 25 November 2016, paragraph 34). *While welcoming all of these provisions and measures, the Committee asks the Government to provide information on their implementation in practice and the results achieved, including with regard to increasing the rate of school enrolment and vocational training for girls and improving women’s access to productive resources and to employment including to managerial posts in the public and private sectors. The Committee also asks the Government to indicate whether a new national gender policy, replacing the one adopted in 2012, has been formulated and, if so, to provide details on those sections relating to gender equality in employment and occupation.*

*Indigenous peoples.* The Committee recalls that it has been drawing the Government’s attention for a number of years to the stigmatization and discrimination faced by the Batwa people and notes that the Government’s report does not contain any information on this matter. The Committee notes that, in their respective concluding observations, CEDAW emphasizes that access to education for Batwa girls is very limited (CEDAW/C/BDI/CO/5-6, paragraph 34(b)) and the

United Nations Committee on Economic, Social and Cultural Rights expresses concern at the lack of effective measures for combating the discrimination faced by the Batwa, particularly with regard to ensuring the effective exercise of their economic, social and cultural rights (E/C.12/BDI/CO/1, 16 October 2015, paragraph 15). *The Committee urges the Government to take the necessary steps to ensure equal access for the Batwa people to education, vocational training and employment, including to enable them to exercise their traditional activities, and also steps to combat stereotypes and prejudice against this indigenous community and to promote tolerance among all sections of the population. The Committee also asks the Government to provide information on the impact of Act No. 1/07 of 15 July 2016 revising the Forestry Code, which provides that the rational and balanced management of forests is based, inter alia, on the principle of participation by the grassroots communities, and on the exercise of traditional activities by the Batwa on the land where they live.*

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

## Canada

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1972)**

The Committee notes the observations of the Canadian Labour Congress (CLC) received on 31 August 2015, the observations of the Public Service Alliance of Canada (PSAC) received on 31 August 2015, the observations of the Confederation of National Trade Unions (CSN) received on 31 August 2015, and the observations of the Coalition of Residential Resources of Quebec (RESSAQ) received on 27 August 2015.

*Article 1(b) of the Convention. Work of equal value. Legislation.* For many years, the Committee has been noting that in a number of Canadian provinces and territories full legislative expression has not been given to the principle of equal remuneration for work of equal value, because the legislation limited comparisons to jobs involving the same work, similar work or substantially similar work. The Committee recalls that the legislation in *Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, the North-West Territories and Yukon* do not give full expression to the principle of equal remuneration for work of equal value; and that in the provinces with pay equity legislation applicable to the public sector, notably, *Manitoba, New Brunswick, Nova Scotia and Prince Edward Island*, there does not appear to be any progress in adopting similar legislation for the private sector. While noting that the Government of *Saskatchewan* continues to implement the 1997 Equal Pay for Work of Equal Value and Pay Equity Policy Framework in the public sector, the Committee notes with **concern** that the new *Saskatchewan* Employment Act adopted in 2014 does not revise the equal pay provision to include the concept of work of equal value. The Committee notes that the CLC repeats its concern over the inadequacy of the legislation as well as the wide disparity in pay equity protection among the provinces, which it believes contributes to the gender pay gap. *The Committee once again urges the Government to take steps to ensure that the legislation in all of the provinces and territories gives full expression to the concept of work of equal value so that the principle of the Convention is applied in all of the provinces and territories in both the public and the private sectors. The Committee asks the Government to provide detailed information on the steps taken to bring the legislation into conformity with the Convention, including any consultations with worker and employer representatives and representatives of the provinces and territories.*

*Article 2. Legislative developments. Federal level.* The Committee recalls its previous comments concerning the Public Sector Equitable Compensation Act (PSECA) which had been adopted in 2009 but has not yet come into force. The Committee recalls that CLC has continuously expressed concerns about the PSECA because, among other things, it was not proactive and it unacceptably introduced market forces as a factor for consideration in the valuation of work. The Committee notes that in the view of PSAC, the PSECA restricts the rights to pay equity of federal sector workers. Both CLC and PSAC call for the repeal of the PSECA. In addition to the explanations provided by the Government in its report, the Committee notes that a Special Committee on Pay Equity was created by the Parliament on 17 February 2016, with a mandate to conduct hearings on the matter of pay equity and to propose a plan to adopt a proactive federal pay equity regime, both legislative and otherwise. On 9 June 2016, the Special Committee tabled its report titled “It’s Time to Act” and the Government responded on 5 October 2016 reaffirming its commitment to develop a proactive pay equity reform, including new legislation. The Committee notes that the Special Committee recommends that the Government repeal the PSECA, and draft proactive pay equity legislation. The Committee also notes that the report recommends that the Government accept the overall direction and recommendations of the 2004 Federal Pay Equity Task Force report. *Noting the concerns that have been raised over the persistence of the gender pay gap, the Committee welcomes the review of pay equity legislation at the federal level and asks the Government to provide information on the steps taken to implement the recommendations of the “Its Time to Act” report, including the adoption of new proactive legislation, its administration and enforcement structures, the repeal of the PSECA, and any other measures adopted to facilitate the transition to a new coherent national pay equity regime.*

*Provinces.* The Committee welcomes the process set in motion in *Ontario* in 2015 to develop a gender wage gap strategy to complement the pay equity legislation and that in November 2017 the Steering Committee has released its report and recommendations to be taken up by the Ministry of Labour of *Ontario* with a view to moving forward on the development of the strategy. The Committee notes that the recommendations are organized around balancing work and caregiving, valuing work, addressing workplace practices and challenging gender stereotypes. In *Quebec*, the Committee

notes the concern of the CSN that the merger in 2014 of the Pay Equity Commission, with the Labour Standards Commission and the Occupational Health and Safety Commission will compromise the effective application of the Pay Equity Act. The Government indicates that the merger will improve the geographical reach of the commissions. ***The Committee asks the Government to report on the development and implementation of the wage gap strategy in Ontario. Noting the various important functions performed by the Pay Equity Commission, including technical advisory and education services along with promotion and monitoring of the enforcement of the Pay Equity Act, the Committee asks the Government to indicate the manner in which the merger of the Pay Equity Commission with the abovementioned institutions affects the implementation of the Pay Equity Act in Quebec and the other services it previously performed.***

*Equal pay for work of equal value of residential welfare workers in Quebec. Indirect discrimination.* The Committee notes the observations submitted by the RESSAQ on the discriminatory impact of the Act on the Representation Resources on their members, the majority of whom are women. Specifically RESSAQ contends that successive job and salary reclassifications have been based on budgetary cuts and not on objective job appraisals, and that female-dominated occupations within the job classifications have been unfairly discriminated against. They state that this has had the impact of downgrading personnel and levels of pay and creating a sub-class of workers based on sex, and not on the important content and results of their work in accordance with pay equity legislation and this Convention. The Committee notes the important work undertaken by the welfare workers. However, the Committee also notes that RESSAQ does not provide sufficient information on the gender bias of the occupational classifications, the methodology used in the reclassification or in the disparity of results based on statistical data disaggregated by sex, for the Committee to draw any conclusions. ***Noting the observations of the RESSAQ, the Committee asks the Government to examine the concerns raised by the RESSAQ and to ensure that the job evaluations are objective and that gender bias has not directly or indirectly entered into or impacted the reclassifications or the salary readjustments, and to take any necessary corrective action to ensure the application of the Convention to these workers.***

*Article 4. Cooperation with employers' and workers' organizations.* The Committee notes the concerns raised by the PSAC over the manner in which its efforts to effectively negotiate and collectively bargain to promote the application of the Convention had been frustrated. Specifically it refers to its inability to help in the development of a new classification system for the federal public sector, an issue which the Committee raises in more detail in its direct request. ***The Committee stresses the importance it places on government cooperation with employer and worker representatives in order to ensure the application of the Convention and hopes that the Government will be in a position to report on the results of the consultation with the PSAC on classification systems, appraisal methodologies and compensation.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

The Committee notes the observations of the Canadian Labour Congress (CLC) received on 31 August 2015, the observations of the Public Service Alliance of Canada (PSAC) received on 31 August 2015, the observations of the Confederation of National Trade Unions (CSN) received on 31 August 2015, and the observations of the Coalition of Residential Resources of Quebec (RESSAQ) received on 27 August 2015.

*Article 1(1)(a) of the Convention. Discrimination on the grounds of political opinion and social origin.* The Committee recalls that it has repeatedly urged the Government to amend the Canadian Human Rights Act (CHRA) and to take the necessary steps to amend the legislation applicable to specific provinces and territories to include the grounds of social origin (or "social condition") and political opinion as prohibited grounds of discrimination in employment and occupation. The Committee notes with ***regret*** the Government's indication that it has not proposed such amendments to the CHRA or taken any steps to ensure that the legislation of the provinces and territories be amended. It notes the view of the Canadian Human Rights Commission that the addition of such prohibited grounds of discrimination would also better reflect and address the realities of discrimination. The Committee notes the CLC's observations that social inequalities are a growing problem and "social origin" and "political opinion" should be included as prohibited grounds of discrimination in the CHRA. Recalling that "social condition" is used in Canadian legislation and jurisprudence in a manner consistent with the term "social origin" in the Convention, the Committee notes that the grounds of social origin or social condition are only covered in the legislation of *Quebec, Northwest Territories, New Brunswick, and Newfoundland and Labrador*; that the ground of "social disadvantage" is prohibited in *Manitoba* and that the grounds of "political opinion or belief" are prohibited grounds of discrimination in employment in *Yukon, Newfoundland, British Columbia, Manitoba, Quebec, Nova Scotia, Prince Edward Island, New Brunswick, and the Northwest Territories*. ***The Committee once again urges the Government to take concrete steps to amend the CHRA to include social origin (or social condition) and political opinion as prohibited grounds of discrimination in employment and occupation and to indicate progress made in this regard. It further asks the Government to identify the steps taken to include these grounds in the legislation of these provinces and territories that have not yet included them as prohibited grounds and report on the progress made. The Committee also asks the Government to provide information on the manner in which workers are protected in practice against discrimination on grounds of social origin and political opinion.***

*Article 2. National equality policy.* The Committee notes that the CLC has repeatedly stressed the need for the development of a more structured national policy on equality in employment and occupation that encompasses unifying

principles for all jurisdictions and expresses the goals to be achieved. The Government repeats its indication that all Canadian governments are pursuing and coordinating active policies designed to implement the Convention, and that the federal Government is not in a position to develop and implement laws, regulations, policies and programmes at the federal level with respect to matters such as employment discrimination, where the provinces and territories exercise jurisdiction. ***The Committee encourages the Government to discuss this matter with representatives of workers' and employers' organizations with a view to developing, at the federal level, a coherent national policy on equality in employment and occupation, and to provide information on the steps taken in this regard and the results achieved.***

*Articles 2 and 3. Occupational gender segregation.* The Committee recalls its previous comments addressing issues of persisting inequalities between men and women. The Committee notes the information on the various measures and programmes undertaken at the federal and provincial levels to advance women's representation in skilled trades and technical professions, including in the apprenticeship programme. It also notes the new requirement, which came into effect on 31 December 2014, for companies listed on the Toronto Stock Exchange to report publically on steps they are taking to increase the number of women on boards. Despite these measures, the Committee notes the concern of the PSAC that women's participation in the labour force has remained stagnant and that women remain concentrated in areas that are underpaid and subject to staffing cuts. They point out that the situation is more serious for Afro-Canadian and indigenous women and for women with disabilities. They also point to the existence of discriminatory practices against persons with family responsibilities and the lack of childcare services which has a negative impact, in particular on women's employment opportunities. The Committee notes the indication by the CLC that the Government is undertaking a gender-based analysis of the apprenticeship programmes to help address the under representation of women in non-traditional work and that the CLC makes a number of recommendations for the Government to consider. The Committee further notes the observations of the CSN underlining the difficulty young women face in entering the labour market and the negative impact of gender-based occupational segregation. The Committee also notes that in his letter of mandate, the Prime Minister has called on the Minister of the Status of Women, along with the Minister of Innovation, Science and Economic Development, to review the current collection of gender statistics and their use by departments to develop, monitor and evaluate policies and programmes, with the goal of increasing the participation of women in fields where they are under-represented. ***The Committee asks the Government to continue to provide information on the steps taken both at the federal and the provincial levels to address the structural barriers resulting in gender-based occupational segregation (both horizontal and vertical) and to promote women's access to training and employment in areas traditionally dominated by men, including through the apprenticeship programmes. The Committee asks that the Government will take into account the recommendations of the CLC in this regard. Please also provide information on the results of the review called for by the Prime Minister and the follow-up action taken, specifically in relation to Afro-Canadian and indigenous women and women with disabilities who face challenges entering the labour market.***

*Article 3. Gender equality in employment and occupation of postal contractors. Indirect discrimination.* The Committee recalls the concerns raised by the CLC relating to indirect discrimination against postal contractors and addresses this issue in its direct request.

*Gender equality in employment and occupation of residential welfare workers in Quebec. Indirect discrimination.* The Committee notes the concerns raised by the RESSAQ on the discriminatory impact of the Law on Representation Resources (LRR) on their members, the majority of whom are women, and addresses this issue in its observation under the Equal Remuneration Convention, 1951 (No. 100).

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

## Central African Republic

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

*Articles 1–3 of the Convention.* With reference to its previous comments regarding the serious human rights violations in the country and recalling that the objective of the Convention, particularly concerning equality of opportunity and treatment in employment and occupation, cannot be achieved in a general context in which such abuses occur, the Committee notes the report of the United Nations Independent Expert on the human rights situation in the Central African Republic for the period July 2016 to June 2017. According to the report, the period covered was once again marked by outbreaks of violence, including sexual violence against women, with increasingly frequent and intense clashes between armed groups, leading to disastrous consequences for civilian populations in virtually all provinces. The report also indicates that, despite the implementation of a legislative and institutional framework, this violence has undermined the Government's efforts to restore the authority of the State and the national and regional initiatives to achieve peace (A/HRC/36/64, 28 July 2017, paragraphs 8, 23, 24 and 39). In this challenging context, the Committee welcomes the establishment, on 23 October 2017, of the National Commission for Human Rights and Fundamental Freedoms, with the mandate of conducting investigations into the serious human rights violations and crimes committed in the territory between December 2003 and January 2015. ***However, taking into account the serious concerns which continue to be expressed regarding the human rights situation and its specific impact on women, children and ethnic and religious communities, the Committee urges the Government to take the necessary steps to promote equality of opportunity and***

*treatment without distinction on grounds of race, colour, sex, religion, political opinion, national extraction or social origin. The Committee urges the Government in particular to address the laws, particularly civil legislation, which have a discriminatory impact and the inferior position of women which creates a context facilitating the perpetration of violence against women, and which the Committee considers have a profound impact on the application of the principle of the Convention. In this context, the Committee also urges the Government to continue taking measures to create the necessary conditions to restore the rule of law and give effect to the provisions of the Convention.*

*Article 1(1)(a) and (b). Protection of workers from discrimination. Constitution and national legislation.* The Committee welcomes the entry into force, on 30 March 2016, of the new Constitution which, like the Transitional Constitutional Charter of 2013, provides that “all human beings are equal before the law without distinction on the basis of race, ethnic origin, regional background, gender, religion, political affiliation and social position”; “the law shall guarantee equal rights for men and women in all areas” (Article 6); “all citizens are equal in employment”; and “no one shall be disadvantaged in their work or employment on the basis of their origin, sex, opinions or beliefs” (Article 11). The Committee notes with *interest* the adoption, on 24 November 2016, of Act No. 16.004 establishing equality between men and women, which provides that at least 35 per cent of appointed and elected posts in both the public and private sectors must be filled by women. The Act also provides for the creation of the National Equality Observatory, which will be responsible for the regular monitoring and evaluation of the implementation of the Act.

The Committee recalls that, under sections 10 and 14 of the Labour Code, “the law shall guarantee to everyone equality of opportunity and treatment in employment and work, with no discrimination” and “access to vocational training is guaranteed to all workers, without discrimination”. The Labour Code prohibits any discrimination against candidates for a job or employees on the basis of mental or physical disability (section 266) and provides that employers’ and workers’ organizations shall ensure the protection of workers from all forms of stigmatization and discrimination on the basis of HIV status (section 313). The Committee also recalls that the Penal Code of 2010 penalizes “any person having discriminated between any individuals or entities on the basis of their origin, gender, family situation, health, disability, lifestyle, political opinions, trade union activities or their membership of a national, ethnic, racial or religious group”. Noting the existence of a constitutional and legislative framework in relation to discrimination, including in employment and occupation, the Committee wishes to draw the attention of the Government to the fact that, based on its experience, the full implementation of the Convention usually requires the adoption of comprehensive legislation defining and prohibiting direct and indirect discrimination, covering at least all of the grounds set out in the Convention and all aspects of employment and occupation. The Committee has accordingly observed that a number of features in legislation contribute to addressing discrimination and promoting equality in employment and occupation more effectively: coverage of all workers (no exclusions); provision of a clear definition of direct and indirect discrimination, and of 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 (see the 2012 General Survey on the fundamental Conventions, paragraphs 854–855). *In light of the above, the Committee asks the Government to examine the possibility of reinforcing the labour legislation against discrimination, on the occasion of a future revision of the Labour Code, by inserting provisions explicitly prohibiting any form of discrimination on at least the grounds set out in the Convention (race, colour, sex, religion, political opinion, national extraction or social origin) and on any other grounds of discrimination which it considers important to include, covering all stages of employment, including recruitment. It also asks the Government to examine the possibility of including provisions protecting victims from retaliation and providing for adequate sanctions. The Committee also asks the Government to provide information on the implementation of Act No. 16.004 of 2016 establishing equality for men and women in the public and private sectors, in particular information on the application of the 35 per cent quota of women in elected and appointed posts and on the results achieved in numerical terms, and information on the establishment and activities of the National Equality Observatory, as provided for by the Act. The Government is requested to provide a copy of the Act and any implementing texts.*

*Articles 2 and 3. National policy of equality of opportunity and treatment.* The Committee recalls that the implementation of a genuine national equality policy requires not only the adoption of an appropriate legislative framework, but also the implementation of a range of specific measures, in collaboration with the employers’ and workers’ organizations, within the framework of collective agreements, plans of action including, inter alia, affirmative action and awareness-raising measures, or through specialized bodies. *While acknowledging the difficult situation in the country, the Committee once again asks the Government to take practical measures, in collaboration with the employers’ and workers’ organizations, pursuant to a genuine national policy for the promotion of equality of opportunity and treatment in employment and occupation without distinction on the basis of religion or ethnic origin or any of the other grounds set out in Article 1(1)(a) of the Convention. It also asks the Government to provide information on any measures adopted in this respect.*

*In the absence of information on this subject in the Government’s report, despite its request and taking into account the context of persistent violence against women, the Committee once again asks the Government to provide*

*information on the application of the National Policy for the Promotion of Equality between Men and Women, adopted in 2005, and the 2007 Plan of Action, which aims to encourage and ensure equality of access of women and men to training and employment, particularly by combating stereotypes and prejudices regarding the role and status of women in the family and in society, and to enable women to better know and assert their rights.*

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

## Congo

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)**

*Articles 1 and 2(a) of the Convention. Principle of equal remuneration for men and women workers for work of equal value. Laws and regulations.* The Committee recalls that, since 2005, it has been drawing the Government's attention to the need to amend sections 80(1) and 56(7) of the Labour Code, which limit the application of the principle of equal remuneration to the existence of "equal working conditions, qualifications and output" (section 80(1)) or to "equal work" (section 56(7)), and do not reflect the notion of "work of equal value". The Committee notes that the Government reaffirms that amendments to sections 80(1) and 56(7) of the Labour Code are envisaged to ensure that the concept of "work of equal value" is binding. ***Noting the Government's commitment, the Committee requests it to ensure, within the framework of the ongoing revision of the Labour Code, that the principle of equal remuneration for men and women workers for work of equal value set out in the Convention is set out in the Labour Code.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)**

*Articles 1–3 of the Convention. Protection against discrimination. Legislation.* For many years the Committee has been emphasizing the shortcomings in the Labour Code and the General Civil Service Regulations regarding the protection of workers against discrimination, since these texts do not cover all of the grounds of discrimination or all the aspects of employment and occupation set out in the Convention. The Committee recalls that the Labour Code only covers the grounds of "origin", gender, age and status in relation to wage discrimination (section 80) and the grounds of opinion, trade union activity, membership or not of a political, religious or philosophical group or a specific trade union in relation to dismissal (section 42). The General Civil Service Regulations prohibit any distinction between men and women in relation to their general application and any discrimination on the basis of family situation in relation to access to employment (sections 200 and 201). The Committee notes the Government's indication that a preliminary draft of a new Bill amending and supplementing certain provisions of the Labour Code will take into account the grounds of discrimination set out in *Article 1(1)(a)*. ***The Committee asks the Government to ensure that, within the framework of the ongoing revision of the Labour Code, discrimination on all of the grounds set out in the Convention is explicitly prohibited, as well as discrimination on any other grounds which it considers appropriate to include in the Code, at all stages of employment and occupation, including recruitment. The Committee also asks the Government to take the necessary measures to amend the provisions of the General Civil Service Regulations in order to ensure that civil servants are protected as a minimum in relation to the grounds set out in Article 1(1)(a) in respect of all aspects of employment, including recruitment and promotion. The Committee also requests the Government to provide information on any legislative developments in this respect.***

*Article 1(1)(a). Discrimination based on sex. Sexual harassment.* The Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed deep concern at the high prevalence of violence against women and girls, especially sexual harassment at school and at work, the delay in adopting a comprehensive law to combat all forms of violence against women and the lack of awareness regarding this issue and of reporting of gender-based violence (CEDAW/C/COG/CO/6, 23 March 2012, paragraph 23). The Committee notes the Government's indication that, since 2011, the new draft Bill amending and supplementing certain provisions of the Labour Code has contained provisions against sexual harassment. ***The Committee once again asks the Government to ensure that provisions covering both quid pro quo harassment and sexual harassment which creates a hostile, intimidating or offensive environment are adopted and that they protect the victims of sexual harassment and establish penalties for the perpetrators. The Committee also asks the Government to take steps, in collaboration with employers' and workers' organizations, to prevent and combat sexual harassment, such as awareness-raising measures for employers, workers and educators as well as for labour inspectors, lawyers and judges, and to establish information systems and complaints procedures which take into account the sensitive nature of this issue in order to bring an end to these practices and allow victims to exercise their rights without losing their jobs.***

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

## Croatia

### **Workers with Family Responsibilities Convention, 1981 (No. 156)** (ratification: 1991)

The Committee notes with *regret* that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

Noting the adoption of the new Labour Act of 18 July 2014, the Committee hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the specific issues raised in relation to the Labour Act, and other matters raised in its previous comments.

*Article 3 of the Convention. National policy.* The Committee recalls the National Policy for the Promotion of Gender Equality (2006–10). The Committee notes with interest the legislative measures to give effect to the provisions of the Convention, in particular the adoption of the Anti-discrimination Act, 2008 (*Official Gazette* No. 85/08), and the Maternity and Parental Benefits Act, 2008, as last amended in 2011 (*Official Gazette* Nos 85/08, 10/08 and 34/11), as well as the establishment of the Maternity and Parental Benefits Act Implementation Monitoring Commission. The Committee notes that section 1(1) of the Anti-discrimination Act provides for protection against discrimination on various grounds, including gender and marital or family status. The Office of the Ombudperson has been a central equality body since 2009 and according to its report, three cases concerned marital or family status among a total of 172 cases of alleged discrimination filed with the Office. ***The Committee asks the Government to provide information on the practical application of the Maternity and Parental Benefits Act, 2008 and the results achieved under the National Policy for the Promotion of Gender Equality (2006–10), in order to promote equality of treatment and opportunity of workers with family responsibilities. Please also provide information on the functions of the Maternity and Parental Benefits Act Implementation Monitoring Commission. The Committee further requests the Government to provide information on any cases of discrimination related to family responsibilities dealt with by the Office of the Ombudperson or the courts.***

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

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

## Equatorial Guinea

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 2001)

The Committee notes with *regret* that, in spite of the numerous requests, the Government failed once again to submit a report. The Committee notes that the Government did not take the opportunity provided by the enactment of the Fundamental Act of Equatorial Guinea, on 16 February 2012, and of the General Labour Reforms Act (No. 10/2012), on 24 December 2012, to address the matters raised by the Committee in its previous comments initially made in 2008.

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination.* The Committee notes that section 15 of the Fundamental Act of 2012 (previously section 15 of the Fundamental Act of 1995) provides that any bias or discrimination on tribal, ethnic, gender-related, religious, social, political or any other similar grounds, when duly ascertained, is punishable by law. Further, under section 1(3)(d) of the General Labour (Reforms) Act of 2012 (previously section 1(4) of the General Labour Act, 1990) the State guarantees equality of opportunity and treatment in employment and occupation and provides that no one may be subjected to discrimination, that is, to any distinction, exclusion or preference on grounds of race, colour, sex, political opinion, national extraction, social origin or trade union affiliation. The Committee notes that while section 1(3)(d) of the General Labour (Reforms) Act of 2012, continues to omit reference to religion as one of the prohibited grounds of discrimination, that ground is included in section 15 of the Fundamental Act of 2012. The Committee recalls that where provisions are adopted in order to give effect to the principles in the Convention, they should include at least all of the grounds of discrimination laid down in *Article 1(1)(a)* (see General Survey on the fundamental Conventions, 2012, paragraph 853). ***The Committee therefore urges the Government to take steps to add the ground of "religion" to the list of prohibited grounds of discrimination at the earliest opportunity. The Committee once again asks the Government to provide information on the practical application of section 15 of the Fundamental Act of 2012, and of section 1(3)(d) of the General Labour (Reforms) Act of 2012, and to indicate whether any administrative or judicial decisions have been handed down concerning these provisions, and if so, to provide details thereof.***

*Articles 1(1)(b) and 5. Other grounds. Special measures.* The Committee notes that section 1(4) of the General Labour Act of 1990 (now section 1(3)(d) of the General Labour (Reforms) Act of 2012) makes provision for facilitating the recruitment of older workers and those with reduced working capacity. The Committee had previously requested a copy of the National Employment Policy (Reforms) Act No. 6/1999 of 6 December 1999. It notes that section 62 of the National Employment Policy Act No. 6/1992 of 3 January 1992, as amended by the National Employment Policy (Reforms) Act of 1999, provides for the adoption of governmental programmes aimed at promoting employment among workers facing obstacles to entering the labour market, especially young first-time jobseekers, women, men older than 45 years of age and persons with disabilities. ***The Government is asked to supply information on the practical***

**application of the abovementioned provisions as it relates to older workers, young first-time jobseekers, and persons with disabilities.**

*Articles 2 and 3. National policy to promote equality of opportunity and treatment.* The Committee recalls that discrimination in employment and occupation is a universal phenomenon that is constantly evolving, and that some manifestations of discrimination have acquired more subtle and less visible forms. It is therefore essential to acknowledge that no society is free from discrimination and that continuous action is required to address it. Moreover, the results achieved in the implementation of the national equality policy and programmes must be periodically assessed so that they can be adapted to the population's needs, particularly for those groups that are most vulnerable to discrimination (see General Survey, 2012, paragraphs 731 and 847). **The Committee asks the Government to indicate whether it has a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, and describe how it is implemented (legal procedures, practical measures, etc.) in each of the following spheres: (i) access to vocational training; (ii) access to employment and to particular occupations; (iii) terms and conditions of employment. The Committee asks the Government to take specific steps with a view to assessing the results of the implementation of the national equality policy and to provide information on its impact on the different sections of the population and to supply statistical data disaggregated by sex, race, ethnic origin and religion on employment and vocational training and any other information which would enable the Committee to evaluate more fully the manner in which the Convention is applied in practice.**

*Article 4. Measures affecting individuals suspected of activities prejudicial to the security of the State.* **The Committee once again asks the Government to provide information concerning the practical application of Article 4 of the Convention, as well as specific information on the procedures establishing the right to appeal to a competent and independent body.**

## Ethiopia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)**

*Articles 1 and (2)(a) of the Convention. Work of equal value. Private sector. Legislation.* Since 2007, the Committee has been recalling that sections 14(1)(b) and 87(1) of the Labour Proclamation No. 377/2003, while prohibiting discrimination based on sex in respect of remuneration, do not specify that equal remuneration is required where men and women perform different work which is nevertheless work of equal value. The Committee recalls that 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. 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 (see General Survey on the fundamental Conventions, 2012, paragraphs 672–679). The Committee notes with *regret* that the Government merely reiterates that the Committee's comments will be taken into account in the ongoing process of amending the Labour Proclamation. **The Committee therefore asks the Government to adopt the necessary measures in the near future to give full legislative expression to the principle of equal remuneration for men and women for work of equal value in the Labour Proclamation, and to provide information on the concrete steps taken in this respect.**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)**

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation.* The Committee recalls the absence of explicit legislative protection against discrimination in all aspects of employment and occupation on the grounds of colour, social origin and national extraction in both the Labour Proclamation (No. 377/2003) and the Federal Civil Service Proclamation (No. 515/2007). The Committee also recalls that, in accordance with section 26(2) of the Labour Proclamation, the following grounds shall not be deemed to constitute legitimate grounds for termination of the employment contract: trade union membership or activities, nationality, sex, religion, political outlook, marital status, race, colour, family responsibility, pregnancy, lineage or social status. The Committee notes that the Government reiterates that it considers that the grounds of social origin and national extraction are substantially covered by the expression "any other conditions" or "any other grounds", used respectively in section 14(1)(f) of the Labour Proclamation, and section 13(1) of the Federal Civil Service Proclamation. While acknowledging the Government's view, and given the persisting patterns of discrimination on the grounds set out in the Convention the Committee wishes to draw the Government's attention to the need for comprehensive legislation containing explicit provisions defining and prohibiting direct and indirect discrimination on at least all of those grounds, and in all aspects of employment and occupation, in order to enable workers to avail themselves of their right to non-discrimination, and to ensure the full and effective application of the Convention. **The Committee therefore once again asks the Government to take concrete steps to amend the Federal Civil Service Proclamation No. 515/2007 and the Labour Proclamation No. 377/2003 in the context of its current revision, with a view to specifying colour, social origin and national extraction as prohibited grounds of discrimination and to ensure that discrimination is prohibited in all aspects of employment and occupation on the basis of all the grounds enumerated in the Convention. The Committee trusts that the Government will soon be in a position to report progress in this regard.**

*Scope of application.* The Committee notes the Government's indication that the issue of amending the Labour Proclamation to provide explicitly that workers and candidates for employment are protected against discrimination is still under consideration. **The Committee urges the Government to take steps to ensure that not only workers but also candidates for employment are explicitly protected against discrimination in all aspects of employment and occupation, and asks the Government to provide information on any progress made in this regard.**

*Equality of opportunity and treatment irrespective of race and colour. Indigenous communities.* Further to its request for information on the situation of pastoralists, the Committee notes the Government's general indication that it has been taking steps to develop pastoralist communities, such as establishing infrastructures, launching mega projects, establishing mobile schools and training centres for pastoralists. The Government further indicates that it usually undertakes prior consultation with concerned parts of the community in areas where large-scale farming and other projects are going to take place, by raising awareness of these projects and allowing the communities affected to participate actively in the implementation process. The Committee notes that in 2013, the United Nations Special Rapporteur on the Rights of Indigenous Peoples had expressed concerns at some resettlements as part of the "Villagization" Programme and the situation of indigenous agro-pastoralists. The Special Rapporteur had noted in particular that, based on the information received and on other reliable sources, there were strong indications that the indigenous agro-pastoralists affected by the resettlements had been living in the lower Omo Valley area for many years, maintaining their culturally distinctive land tenure and way of life, including their traditional flood retreat agriculture practice (A/HRC/24/41/Add. 4, 2 September 2013, paragraphs 84–86). The Committee recalls that 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 and that steps should be taken to ensure equality of opportunity and treatment of indigenous peoples in employment and occupation, including the right to engage without discrimination in traditional occupations and livelihoods. Recognition of the ownership and possession of the lands they traditionally occupy and access to their communal lands and natural resources for traditional activities is essential. 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 (see General Survey of 2012 on the fundamental Conventions, paragraph 768). **With a view to achieving equal opportunity and treatment of indigenous communities with the rest of the population with respect to employment and occupation, in particular traditional occupations, the Committee asks the Government to ensure that due consideration is given to the land-based pastoralists' livelihood and way of life in establishing and implementing the national policy and planning frameworks, including in the context of the programmes undertaken to develop pastoralist communities, taking into consideration their specific needs. The Committee asks the Government to provide information on the steps taken in cooperation with pastoralist communities to assess their ability to pursue their traditional activities, in particular with respect to their traditional land rights, and the results of such steps.**

#### **Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the ILO Constitution)**

The Committee recalls that the final award of damages in respect of claims made was determined on 17 August 2009. The Committee notes that the Government reiterates its previous statement that since the Eritrean Government has not yet settled the payment to Ethiopian workers, the final award has not yet been enforced. **Recalling that the Claims Commission, in its decision of 27 July 2007, recognized that each State party had full authority to determine the use and distribution of any damages awarded to it, the Committee once again asks the Government to identify the steps taken or envisaged to grant actual relief or remedies to the workers displaced following the outbreak of the 1998 border conflict.**

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

#### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1991)**

*Article 2 of the Convention. Scope. Legislation.* The Committee notes with **regret** that, since 1995, it has been requesting the Government to provide information on the manner in which the Convention is applied to workers excluded from the scope of the Labour Proclamation No. 377/2003 (and previously No. 42/1993), as amended, other than those covered by the Federal Civil Servants Proclamation No. 515/2007 (that is, workers under contracts for the purpose of upbringing, treatment, care or rehabilitation; for educating or training, other than as apprentices; for those holding managerial posts in undertakings; for personal service for non-profit-making purposes; for members of the armed forces or the police force, employees of the state administration, judges and prosecutors for self-employment under a contract of service). **Recalling that the Convention applies to all branches of economic activity and all categories of workers and in the absence of a reply in the Government's report, the Committee asks once again the Government to provide more detailed information on all regulations or specialized legislation providing protection, at least equivalent to that afforded under the Convention, to the categories of workers excluded from the application of the Labour Proclamation No. 377/2003.**

The Committee is raising other matters in a request address directly to the Government.

## France

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)**

*Gender pay gap.* The Committee notes that, according to the key statistics on equality between men and women (2017), the average annual net wages of women working full time were 18.6 per cent lower than those of men in the private sector and in public enterprises in 2014 (20.1 per cent in 2009). The Committee also notes the Government's indication that, where characteristics of salaries and posts are identical, there is an unexplained gap of 9.8 per cent. ***The Committee requests the Government to continue providing information on the gender pay gap in different sectors of the economy.***

*Articles 1 and 2 of the Convention. Legislative developments.* The Committee notes with ***interest*** the adoption of Act No. 2014-873 of 4 August 2014 on substantive equality between women and men which sets out, in particular, that the gender equality policy should include actions aimed at guaranteeing equality in employment and remuneration, and occupational gender balance, and lays down the obligation for the employer to hold annual negotiations on, inter alia, the definition and the programming of measures to eliminate the gender pay gap. The Committee also notes that the sanctions mechanism, in the event of non-compliance with the provisions on equal pay, which was implemented by Act No. 2010-1330 of 9 November 2010 on pension reform, was amended by Act No. 2015-1702 of 21 December 2015 on the financing of social security for 2016, in particular with regard to the amount of the sanctions. ***The Committee asks the Government to provide information on the implementation of the obligation to negotiate measures each year to eliminate the wage gaps, envisaged by the Act of 2014, and on the results achieved, and to provide information on the functioning of the new sanctions mechanism, by indicating the number of inspections conducted and enterprises concerned, as well as the amount of the sanctions applied in the case of non-compliance. It also requests the Government to provide information on any new legislative or administrative measures adopted in relation to equal pay between men and women within the framework of the current labour law reform.***

*Application of the principle of equal pay in the civil service.* While noting that the Government's report is silent on this question, the Committee welcomes the Prime Minister's report of 27 December 2016 entitled "The strength of equality: Wage inequality and career paths of women and men in the civil service", which highlights the importance of the concept of "work of equal value" in the implementation of wage equality between men and women. The Committee notes that this report contains over 50 recommendations to, inter alia, re-evaluate in financial terms female-dominated occupations and specializations which are undervalued in terms of the same functions and constraints; establish gender-neutral evaluation criteria and strengthen training for those who carry out these evaluations; design a common employment portal for the whole of the civil service and systematically list the pay conditions for the post in question; conduct experiments regarding transparency of remuneration in any given administration; create an online evaluation tool on expected remuneration; establish a fund for the revenue from fines collected in cases of non-compliance with the obligations to maintain gender balance in appointments; identify and amend regulatory texts that do not comply with the principle of gender neutrality in the designation of civil service occupations. ***The Committee asks the Government to provide information on the follow-up given to the above recommendations of the report and on any measures taken to implement the principle of equal pay between men and women for work of equal value and effectively combat wage inequalities based on sex in the civil service.***

*Article 3. Objective job evaluation. Development or revision of job classifications.* The Committee notes with ***interest*** the publication of two guides on objective job evaluation which emphasize the importance of the concept of "work of equal value" to effectively combat the gender wage gap: the guide on a non-discriminatory evaluation of female-dominated jobs, published in 2013 by the Defender of Rights, which develops and explains the objective evaluation process; and the guide on taking gender equality into account in the classification systems, published in 2017 by the Higher Council on Occupational Equality (CSEP), following work by the joint working group on classifications. One of the main objectives of these practical guides is to show that apparently neutral methods of classification can be discriminatory owing to, for example, the selection or omission of certain criteria, and the over- or under-evaluation of certain factors. These tools explain the different stages of the job evaluation process and provide specific examples of objective job evaluation processes carried out in various countries. The Committee also notes that Act No. 2014-873 of 4 August 2014 on substantive equality between men and women has entrusted the CSEP and the National Collective Bargaining Commission with a new mission concerning follow-up to the revision of occupational classifications and the analysis of the negotiations held and good practices. The Committee also notes that the action platform for occupational gender balance set up in 2014 provides that, during the five-yearly review of classifications at the sectoral level, when an average gender wage gap is detected, the social partners shall analyse, identify and rectify the evaluation criteria for posts which may lead to discrimination. ***Recalling that the implementation of the concept of "work of equal value" involves the adoption of a method based on objective criteria and free from gender bias to measure and compare the relative value of different jobs, the Committee requests the Government to provide information on the distribution of the practical guides among workers' and employers' organizations, administrative services and the persons or bodies tasked with carrying out the objective job evaluations, particularly with a view to developing or revising job classifications. It also asks the Government to provide information on any revision of job classifications that are being undertaken or already carried out, the results achieved and the difficulties encountered.***

## **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)**

*Articles 1(1)(a) and (b), and 2 of the Convention. Prohibited grounds of discrimination. Legislative developments.* The Committee notes with **interest** that the list of grounds of discrimination prohibited by the Labour Code (section L.1132-1) has been extended following the adoption of: (i) Act No. 2014-173 of 21 February 2014 on urban planning; (ii) Act No. 2016-832 of 24 June 2016 on combating discrimination based on social precarity; (iii) Act No. 2016-1547 of 18 November 2016 on modernizing the judiciary in the twenty-first century; (iv) Act No. 2017-86 of 27 January 2017 on equality and citizenship; and (v) Act No. 2017-256 of 28 February 2017 on planning for substantive equality overseas and issuing other social and economic provisions. This list now includes the following grounds: origin; sex; customs; sexual orientation; gender identity [in place of “sexual identity”]; age; family situation or pregnancy; genetic characteristics; particular vulnerability resulting from an economic situation that is apparent or known to the author of discrimination [new]; real or perceived, of an ethnicity, nationality or race [in place of “race”]; political opinions; trade union or mutual association activities; religious beliefs; physical appearance; family name; place of residence [new] or location of a person’s bank [new]; state of health; loss of autonomy [new] or disability; and ability to express oneself in a language other than French [new].

The Committee nevertheless notes that “social origin” is still not included among the grounds of discrimination that are prohibited by law, as according to the Government’s previous statements, the term “origin” in section L.1132-1 of the Labour Code covers “national extraction” within the meaning of the Convention. The Committee recalls that social origin is one of the seven prohibited grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention. It also recalls that, as it noted in the General Survey on the fundamental Conventions, 2012, paragraphs 802–804, in certain countries, persons emanating from certain geographical areas or from certain 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. 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. In this respect, the Committee recalls that 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. **Recalling that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all of the grounds of discrimination specified in Article 1(1)(a) of the Convention, the Committee asks the Government to take the necessary steps to ensure that “social origin” is included among the grounds of discrimination that are prohibited by the Labour Code when it is next revised, and to provide information on any steps taken in this regard. It also asks the Government to provide information on the application in practice and the interpretation, in particular by the labour inspectorate and the courts, of the provisions relating to discrimination on the basis of “particular vulnerability resulting from an economic situation apparent or known to the author” of discrimination, “ability to express oneself in a language other than French”, place of residence, locations of a person’s bank or loss of autonomy.**

*Article 1(1)(a). Discrimination on the basis of sex. Definition and prohibition of sexist behaviour. Legislation.* The Committee welcomes the provisions of Act No. 2015-994 of 17 August 2015 on social dialogue and employment, which amend the Labour Code (section L.1142-2-1) and prohibit “any act related to a person’s sex, which has the object or effect of threatening his or her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment”, as well as the provisions of Act No. 2016-1088 of 8 August 2016 on work, the modernization of social dialogue and the security of vocational paths, which introduce the same prohibition into Act No. 83-634 of 13 July 1983 on the rights and obligations of civil servants. **The Committee asks the Government to provide information on the application of the Act of 2015, in particular on the manner in which the labour inspectorate and the courts deal with sexist acts in the workplace, and on the application of the Act of 2016 in relation to civil servants. It also asks the Government to provide information on the implementation of the Plan of Action and Mobilization to Combat Sexism launched in September 2016, including the specific action taken in the area of employment and occupation in the public and private sectors.**

*Sexual harassment. Overseas departments.* **The Committee notes with regret that, despite its repeated requests, the Government has still not provided any information on the application of the Convention in French Guiana and Reunion, and once again asks that the Government provide specific information on any measures adopted by the authorities, employers and labour inspectors to prevent and eliminate sexual harassment at work, as well as information on any cases of sexual harassment dealt with by the courts in the overseas departments.**

*Discrimination on the basis of race, colour or national extraction.* For several years, the Committee has been emphasizing that, despite certain initiatives, the measures introduced do not appear to be producing sufficient results to effectively combat discrimination on the basis of race or national extraction (“origin” under the terms of the national legislation) in employment and occupation, particularly with regard to access to employment for young persons of foreign origin, and has asked the Government to step up its efforts in this regard. In this connection, the Committee welcomes the test conducted by the Ministry of Labour on discrimination in the hiring processes of some 40 enterprises with over 1,000 employees, the findings of which were published in December 2016 and show that in a dozen enterprises, applicants

with names of north African origin suffered discrimination as compared to applicants with names of French origin. It also notes that the Ministry has referred two enterprises to the Defender of Rights and that it encourages enterprises to sign the “pact for equal treatment of applicants in access to employment, irrespective of their origins – commitment by enterprises” which calls for awareness raising among recruiters, the sharing of good practices, as well as the valuing of skills beyond diplomas and qualifications. The Committee notes the adoption of the National Plan to Combat Racism and Anti-Semitism 2015–17, which envisages, inter alia, communication and awareness-raising campaigns, the mobilization of civil society, a review of local citizenship policies and the creation of operational bodies at the local level, the strengthening of penalties and education in this area and the improvement of victim protection. ***While encouraging the Government to continue its tests of workplaces and its initiatives to disseminate information and raise awareness among workers, employers and society in general, the Committee asks the Government to provide information on all the steps taken to effectively combat discrimination on the basis of race, colour and national extraction in recruitment, promotion and conditions of employment, including wages. It also asks the Government to identify the measures adopted to implement the National Plan to Combat Racism and Anti-Semitism 2015–17 in the area of employment, as well as information on the steps taken to evaluate its effectiveness and on the specific results achieved.***

*Roma.* The Committee notes with ***regret*** that the Government’s report does not contain any information in its response to its requests concerning the situation of the Roma in relation to equal access to education, vocational training and employment. It nevertheless notes that evictions of settlements have been carried out and that the United Nations Human Rights Committee has expressed its concern at the fact that the Roma migrants face rejection, exclusion and violence (CCPR/C/FRA/CO/5, 17 August 2015, paragraph 13). ***Referring to its previous comments, the Committee once again urges the Government to take, in collaboration with the organizations representing the Roma, effective steps to combat discrimination against and stigmatization of the Roma and to promote respect and tolerance, and to provide information on any measures taken in this regard. The Committee also asks the Government to provide information on the following:***

- (i) the specific measures taken to ensure the school enrolment and retention at school of Roma children as well as vocational training for young persons and adults; and***
- (ii) the impact of the extension of the list of occupations accessible to Romanian and Bulgarian nationals in relation to the access to employment, including self-employment, of members of the Roman community.***

*Articles 1 and 2. Measures to combat discrimination and to promote equality in employment and occupation.* The Committee notes with ***interest*** the establishment, in September 2014, of a dialogue group on combating discrimination in enterprises, which brought together the social partners, private and public employment intermediaries, the competent services of the ministries concerned and eminent persons, to identify ways to more effectively reduce cases of discrimination against groups of people in workplaces while strengthening legal certainty and promote non-discriminatory methods of recruitment. The Committee notes that the dialogue group put forward 18 proposals in May 2015, which included: the possibility of implementing a similar approach in the public sector; the organization of an awareness-raising campaign; the mobilization of labour inspection services on this issue; the dissemination of information on non-discriminatory methods of recruitment; the establishment in enterprises with over 300 employees of an “equality of opportunity” focal point; the improvement of the “testing” method and the distribution in workplaces of a document containing the principles of the national inter-occupational agreement of 12 October 2006 on diversity in workplaces. The Committee also notes that 13 new proposals were formulated by the dialogue group in November 2016, which included: the organization of an annual information campaign; the conducting of studies to evaluate progress at the enterprise level arising from the implementation of an anti-discrimination policy and to examine the conditions for the development of indicators designed to measure the impact of anti-discrimination measures; the continuation of the work of the dialogue group on the implementation of operational measures to ensure the traceability and transparency of recruitment procedures; the establishment of focal points; and the development of indicators to monitor career and pay development. ***Welcoming the work of the dialogue group to combat discrimination in workplaces, the Committee asks the Government to identify the actions taken on the proposals made in 2015 and 2016, both in terms of the legislation and in practice, and to specify whether the dialogue group is expected to continue its work and, if so, to provide information on its work and on any initiative of this type in the public sector.***

*National policy on equality of opportunity and treatment between men and women.* The Committee notes with ***interest*** the adoption of Act No. 2014-873 of 4 August 2014 on substantive equality between women and men which provides for the implementation of a policy of equality between women and men that includes, in particular, preventive and protective action to combat violence against women and attacks on their dignity, action to prevent and combat sexist stereotypes and to guarantee occupational and wage equality and gender balance in occupations, as well as action to promote a better work–life balance and a balanced distribution of parental responsibilities. The Act of 2014 also requires that these actions are evaluated. Moreover, the Committee welcomes the establishment of the High Council for Equality between Women and Men by Act No. 2008-496 of 27 May 2008 issuing various provisions to adapt national legislation to community law in the field of combating discrimination, as a result of amendments introduced by Act No. 2017-86 of 27 January 2017 on equality and citizenship. It notes that the High Council is, inter alia, responsible for formulating recommendations and opinions, proposing reforms to the Prime Minister, contributing to the evaluation of public policies on women’s rights and equality between women and men in every area of social life and submitting an annual report on

the state of sexism in France which is published. The Committee also notes that the High Council published a report in February 2017 on training on equality between girls and boys, recommending initial and further training for educational personnel and the development of a practical guide. The Committee welcomes the Government's commitment to making gender equality and non-discrimination, with a focus on sexual and gender-related violence, a high priority and a national cause for 2017–22. *The Committee asks the Government to provide information on the steps taken in the area of employment to implement the policy for equality between women and men, in particular in relation to combating sexist stereotypes and promoting gender balance in occupations, and on any impact assessment in respect of the same. The Committee also asks the Government to provide information on the activities of the High Council for Equality between Women and Men in the area of employment and work.*

*Discrimination on the basis of religion. In the absence of information on this matter in the Government's report, the Committee reiterates its request for information on the application in practice of Act No. 2010-1192 of 11 October 2010 prohibiting faces being covered in public places in relation to employment, taking into account its possible effects on the employment of Muslim women. It asks the Government to indicate whether any steps are envisaged to evaluate the impact of this Act and, if so, whether they have been taken.*

*Enforcement by the courts. Legislative developments.* The Committee notes with *interest* the provisions of Act No. 2016-1547 of 18 November 2016 on modernizing the judiciary in the twenty-first century, which allows for representative workers' organizations and associations to bring group actions when several persons who are in a similar situation are subjected to direct or indirect discrimination on the same grounds and by the same person or enterprise. A group action may seek, initially, to bring an end to the discrimination and then to obtain compensation for any harm suffered. *The Committee asks the Government to provide information on the taking of group actions in relation to discrimination in employment and, where applicable, on any evaluation of this mechanism.*

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

## Gabon

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1961)**

*Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation.* For more than two decades, the Committee has been emphasizing the need to amend section 140 of the Labour Code so that it clearly and fully reflects the principle of equal remuneration for men and women for work of equal value. The Committee recalls that 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. 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 (see the General Survey on the fundamental Conventions, 2012, paragraphs 672–679). The Committee notes the Government's indication that the draft revised version of the Labour Code has taken account of the various proposed amendments, including that of section 140, but that it is still in the process of being adopted. *The Committee trusts that the draft revised version of the Labour Code will be adopted soon and requests the Government to take the necessary steps to ensure that the provisions of section 140 fully reflect the principle of the Convention. It also asks the Government to send a copy of the new provisions once they have been adopted.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

*Articles 1(1)(a) and 3(c) of the Convention. Discrimination on the basis of sex. Legislation.* The Committee recalls that it has been emphasizing since 2005 that certain provisions of the Civil Code (section 253, under the terms of which the husband is the head of family; section 254, under which the husband determines the place of family residence; and section 261 respecting the exercise of an occupation by the wife) by their nature, limit the freedom of women to work and can result in discrimination in employment and occupation. In its most recent comments (in 2013), the Committee noted that two Bills to repeal and replace the Civil Code (Act No. 19/89 of 30 December 1989) had been submitted to Parliament and it expressed the firm hope that the provisions of the Civil Code that have a discriminatory effect on women would be repealed in the near future. With reference to paragraph 787 of its General Survey on the fundamental Conventions, 2012, the Committee recalls that the 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. Distinctions based on civil status, marital status, or more specifically family situation (particularly with regard to 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. It also recalls that 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. The Committee observes that the Government states that the draft revised versions of the Civil Code and the Labour Code are still before Parliament and have not yet been adopted. The Committee also notes that the Government's report does not contain any information on the content of the draft revised version of the Labour Code.

*The Committee asks the Government to take the necessary steps to ensure that the provisions of the Civil Code that have a discriminatory impact on women's employment are repealed in the near future and to provide a copy of the amended Civil Code. Regarding night work by women, as regulated by sections 167 and 169 of the Labour Code, the Committee asks the Government as part of the revision of the Labour Code which has been in progress for a number of years, to critically review these provisions in the light of the principle of equality of opportunity and treatment for men and women, while examining whether measures need to be adopted for the security of the workers and the development of adequate means of transport.*

*Article 1(1)(a). Sexual harassment.* The Committee notes that the Government's report merely states that the Government will send copies of the legislative standards that will be adopted to give effect to the law. The Committee notes that the Government, in its replies to the questions concerning its report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), indicates that the draft revised version of the Labour Code contains provisions defining sexual harassment as subjecting a person at work or in the workplace to pressure or verbal, physical or moral violence for one's personal satisfaction or to gain a sexual favour for oneself or for a third party (CEDAW/C/GAB/Q/6/Add.1, 30 January 2015, paragraph 13). The Committee observes that this definition is too restrictive to cover the full range of behaviour that constitutes sexual harassment since it omits conduct or remarks that create an intimidating, hostile or offensive work environment (see General Survey, 2012, paragraphs 789–794). *The Committee trusts that the draft revised version of the Labour Code will be adopted soon and asks the Government to take the necessary steps to ensure that the provisions relating to sexual harassment define and explicitly prohibit both quid pro quo and hostile work environment sexual harassment. It also asks the Government to take practical steps to raise awareness of the issue of sexual harassment among workers, employers and their respective organizations, and also among labour inspectors, lawyers and magistrates, including through the production and dissemination of information and advisory leaflets and radio or TV programmes, or through campaigns or information meetings. The Committee asks the Government to specify any steps taken towards this end.*

*Discrimination on the basis of national extraction, race, colour or religion.* The Committee notes the Government's undertaking to remain vigilant in the implementation of the "Gabonization" employment policy, so that this policy "does not overstep international standards". *Recalling the risk of discriminatory practices based on national extraction, race, colour or religion in the context of the implementation of such a policy, the Committee asks the Government to periodically review its impact on the hiring or dismissal of Gabonese nationals who, on account of their foreign origin, race, colour or religion, might be treated as non-nationals. The Committee also asks the Government to provide data on the number of jobs affected each year by the policy of the "Gabonization" of employment.*

*Article 2. National policy on equality. Equality of opportunity and treatment for men and women in employment and occupation.* The Committee notes with *regret* that the Government's report does not contain any information on the implementation of the National Equality and Gender Equity Strategy, adopted in 2010, or on any measures to promote gender equality. However, the Committee recalls that the strategy document contained an analysis of gender inequalities and disparities, according to which women were poorer, at greater risk of unemployment, less educated and less well-trained than men, faced problems in terms of access to land, means of production and credit, and were unaware of their rights. The Committee also notes that CEDAW, in its concluding observations, expressed concern "at the persistence of adverse cultural norms, practices and traditions and patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family and society" (CEDAW/C/GAB/CO/6, 11 March 2015, paragraph 20). The Committee has also learned that the Government has approved a proposal to create the "Women Business Center", a platform wholly dedicated to women entrepreneurs. *The Committee asks the Government to take steps to promote equality of opportunity and treatment for men and women in employment and occupation, including by effectively combating stereotypes regarding women's aspirations, preferences and capabilities and their role in society and enabling them to have access to a wider range of jobs and occupations, through vocational guidance and training which are free from gender bias. The Committee asks the Government to provide information on the steps taken and their results and also on the activities of the Ministry of Equal Opportunities in relation to this matter. Lastly, the Committee asks the Government once again to take steps in the near future to resolve the difficulties that women face in gaining access to resources and the means of production, particularly credit and land, and to encourage women's entrepreneurship. The Committee asks the Government to provide information on all steps taken in this respect.*

## Gambia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 1(1)(a) of the Convention. Discrimination in employment and occupation. Legislation.* The Committee previously pointed out that the provisions of the Constitution regarding discrimination did not include any reference to the prohibition of direct and indirect discrimination in employment and occupation and only concerned discriminatory treatment by public officials (section 33(3)). It also noted that the Labour Act 2007 neither defines nor prohibits discrimination in employment and occupation on the basis of any of the grounds enumerated in the Convention, except in the case of dismissal and disciplinary action (section 83(2)). The Committee notes that the Government provides no response to its request regarding the need to amend the legislation. The Committee recalls once again that, although general constitutional provisions regarding non-discrimination are important, they are generally not sufficient to address specific cases of discrimination in employment and occupation, and comprehensive anti-discrimination legislation is generally needed to ensure the effective application of the Convention, based on at least all the grounds of discrimination listed in *Article 1(1)(a)* and in all areas of employment and occupation. ***The Committee asks the Government to take steps in order to include legislative protection against direct and indirect discrimination at all stages of employment and occupation based on, as a minimum, all of the grounds enumerated in the Convention, namely, race, colour, sex, religion, political opinion, national extraction and social origin. The Committee also asks the Government to include in legislation provisions establishing dissuasive sanctions and appropriate remedies in cases of discrimination. Please provide specific information on progress made in this regard.***

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

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

## Georgia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)***

The Committee notes the observations, dated 26 September 2014, 2 March 2015 and 3 October 2016, from the Georgian Trade Unions Confederation (GTUC) which address similar issues related to the application of the Convention, as well as the response from the Government, dated 20 November 2015 and 16 December 2016.

*Articles 1 and 2 of the Convention. Legislation.* Since 2002, the Committee has been raising concerns regarding the absence of legislation giving full expression to the principle of equal remuneration for men and women for work of equal value. The Committee recalls that section 2(3) of the Labour Code of 2006, only contains a general prohibition of discrimination in labour relations and that the Law on Gender Equality of 2010 prohibits discrimination (section 6) and provides that “equality in evaluating the quality of work performed by women and men shall be maintained without discrimination” (section 4(2)(i)). The Committee notes with *regret* that the Government continues to refer to the existing equality provisions in the Constitution, the Labour Code and the Law on Gender Equality, and does not indicate whether any consideration is being given, in consultation with the social partners, to reviewing these provisions with a view to giving full legal expression to the principle of equal remuneration for men and women for work of equal value. The Committee further notes that the Law on the Elimination of All Forms of Discrimination, adopted on 2 May 2014, while including a general prohibition of discrimination based on sex, does not refer to the principle of equal remuneration for work of equal value. Furthermore, the Committee notes that section 57(1) of the Law on the Public Service adopted on 27 October 2015 provides that the system of remuneration for public officials is based on the “principles of transparency and fairness, which means the implementation of equal pay for equal work”, which is narrower than the principle of the Convention. The Committee recalls that 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. 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 (see the General Survey on the fundamental Conventions, 2012, paragraphs 672–679). The Committee notes the Government’s indication that the “State Strategy of Labour Market Formation and its Implementation Action Plan 2015–18” includes amending the Labour Code to bring its provisions into compliance with international labour standards, and that the GTUC reaffirms the need to give full expression to the principle of equal remuneration for men and women for work of equal value in the legislation. ***The Committee urges the Government to take without delay concrete steps, in cooperation with the social partners and the Council for Gender Equality, to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring the full and effective implementation of the Convention. It also urges the Government to take the necessary steps to amend section 57(1) of the Law on the Public Service 2015 to capture the concept of “work of equal value” so as to ensure that public officials covered by the Law are entitled not only to equal remuneration for equal work, but also for work that is entirely different but nonetheless of equal value, and to report on the progress made in this regard.***

*Article 2. Measures to address the gender pay gap and promote equal remuneration.* The Committee recalls the significant differences in average monthly nominal wages of men and women indicating a gender wage gap of 37.7 per cent (first quarter of 2013). The Committee notes the statistics provided by the Government in its report on the average monthly salaries of men and women in 2014 indicating a persistent overall gender wage gap of 36.9 per cent (which is a slight decrease compared to 2013). The statistics point to substantial nominal monthly wage differences in favour of men, with a very high gender wage gap of over 40 per cent in the finance sector, and a gender wage gap amounting to close to 30 per cent or over 35 per cent in a number of sectors including fishing, mining and quarrying, manufacturing, wholesale and retail and hotel and restaurant sectors, as well as in health and social work and other community, social and personal service activities. The Committee notes that in its communication, the GTUC reiterates that a substantial gender gap in average monthly nominal wages exists in every sector of the labour market, including in female-dominated sectors such as

education and health care. Referring to a study of the Bureau of Statistics, the GTUC also indicates that inequality exists with respect to the average salary distribution among men and women even with similar levels of education. According to the GTUC, such pay differences may be due to occupational gender segregation, as well as to the fact that men are primarily employed in the private sector whereas women are more evenly distributed across both private and public sectors. The GTUC further indicates that the study of the Bureau of Statistics found substantial gender disparities with regard to benefits and other wage components, and states that some of these could be partly explained by occupational gender segregation but may also be due to gender discrimination. The study found that 66 per cent of the male respondents (who were eligible) received bonuses, compared to only 34 per cent of the female respondents; 60 per cent of the men received premiums compared to 41 per cent of the women. Furthermore, 67 per cent of the men and only 33 per cent of the women claimed to have health insurance provided by the employer. With regard to measures taken to address the gender pay gap, the Committee notes the Government's indication that the 2014–16 National Action Plan on Gender Equality, adopted in January 2014, aims, inter alia, to promote gender equality in the economic sphere. The Government also reports that it has strengthened its institutional mechanisms on gender equality at the executive level, including through the setting up of an Inter-Ministerial Commission on Gender Equality and Women's Empowerment in September 2015. In addition, in 2014, an Interagency Coordinating Council for the Government's Action Plan on the Protection of Human Rights (2014–15) was set up for an indefinite period. The Committee notes that the Action Plan refers to gender equality, women's empowerment and their rights (Chapter 14) and to the protection of labour rights in accordance with international standards (Chapter 21). *Noting however that no further information has been provided on the specific measures taken, including in the context of these mechanisms and the National Action Plan on Gender Equality, to reduce the gender pay gap and address its underlying causes, the Committee urges the Government to take measures without delay to identify and address the underlying causes of inequalities in remuneration, such as gender discrimination, gender stereotypes, and occupational segregation and to promote women's access to a wider range of job opportunities at all levels, including top management positions and higher paying jobs. The Committee also asks the Government to provide information on any awareness-raising activities undertaken in cooperation with the employers' and workers' organizations to promote equal remuneration for work of equal value, including with respect to additional bonuses, premiums and other additional wage allowances. The Government is also asked to continue to provide statistical data on men's and women's monthly and hourly wages and additional allowances, according to economic sector, as well as data on the number of men and women employed in these sectors.*

*Enforcement.* The Committee previously noted with concern the Government's indication that further to the abolition of the Labour Inspection Service in 2006, there was no longer a labour supervisory body. The Committee notes the Government's reply that a National Programme for Monitoring Labour Conditions was approved by Ordinance No. 38 of 5 February 2015 and that by Ordinance No. 81 of 2 March 2015 a Department of Inspection of Labour Conditions was set up within the Ministry of Labour, Health and Social Affairs. The Department aims to develop the relevant legal framework to inspect safety conditions and review safety-related complaints, and propose recommendations. While noting the Government's indication that the Department of Inspection of Labour Conditions can also develop appropriate recommendations to prevent cases of discrimination and raise awareness, the Committee notes that the National Programme and the responsibilities of the Department of Inspection of Labour Conditions primarily focus on promoting and ensuring a safe and healthy work environment. The Committee notes the observations by the GTUC about the lack of an adequate and effective enforcement mechanism to ensure the practical application of the principle of equal remuneration for men and women for work of equal value. The Committee further notes that the Office of the Public Defender has indicated that the Labour Code should be amended to address the non-binding character of recommendations made by the inspection services. The Committee once again stresses the need to put in place adequate and effective enforcement mechanisms to ensure that the principle of equal remuneration for men and women for work of equal value is applied in practice, and to allow workers to avail themselves of their rights. *The Committee asks the Government to provide information on the manner in which it ensures the effective enforcement of the principle of the Convention, including on any activities of the Department of Inspection of Labour Conditions in this regard. The Committee also asks the Government to take steps to raise awareness among workers, employers and their organizations of the laws and procedures available, and to strengthen the capacity of judges, labour officials or other competent authorities to detect and address pay inequalities between men and women for work of equal value. The Government is also asked to continue to provide any information on decisions handed down by the courts or other competent bodies with regard to this issue, as well as any cases regarding unequal remuneration handled by the Office of the Public Defender, which is mandated to examine complaints of sex discrimination and make recommendations.*

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1993)***

The Committee notes the observations of the Georgian Trade Unions Confederation (GTUC) dated 26 September 2014, 2 March 2015 and 3 October 2016 which address similar issues related to the application of the Convention, as well as the responses from the Government dated 20 November 2015, 16 December 2016 and 8 November 2017.

*Article 1 of the Convention. Discrimination in the recruitment stage.* The Committee recalls its previous comments in which it noted that the Labour Code prohibited any kind of discrimination based on a number of grounds in

employment relations (section 2(3)) but did not explicitly cover discrimination at the recruitment or selection stage nor did it define discrimination. The Committee notes that following amendments to section 2(3) of the Labour Code in 2013, discrimination is now prohibited in “pre-contractual relations” (Organic Law No. 729-II of 12 June 2013 to amend the Labour Code). The Committee notes however, that according to the GTUC, discrimination in the context of pre-contractual relations, including job advertisements, is still common in practice and cases are often not reported. Pregnancy and marital status, in particular, operate as impediments to recruitment. The GTUC also reiterates that under section 5(8) of the Labour Code an employer is not required to give reasons for a decision not to hire a candidate, which may bar candidates from successfully bringing discrimination cases. The Committee further notes from the Government’s report that the Office of the Public Defender found that gender stereotypes regarding the type of jobs for women and men are reflected in discriminatory job advertisements, and that a study of the most widely used job advertisement website (www.jobs.ge) revealed that 10 per cent of the online job advertisements specifically targeted female candidates and 24 per cent male candidates. To address this situation, the Office of the Public Defender has recommended that the Ministry of Labour, Health and Social Affairs develops guidelines to prevent discrimination in the recruitment stage. ***The Committee asks the Government to take the necessary steps to eliminate discriminatory practices at the recruitment stage, including in job advertisements, and to provide information on the number and nature of cases handled by the courts or the Office of the Public Defender regarding discrimination in “pre-contractual relations”, including sanctions imposed and remedies provided.***

***Discrimination based on sex. Sexual harassment.*** The Committee recalls that section 6(1)(b) of the Law on Gender Equality of 2010 prohibits “any type of unwanted verbal, non-verbal or physical act of a sexual nature that is aimed at or induces impairment of a person’s dignity or creates humiliating, hostile or abusive conditions for him/her”, and that section 2(4) of the Labour Code only prohibits harassment more generally as a form of discrimination. The Committee notes that the Law on the Elimination of All Forms of Discrimination, adopted in 2014, prohibits discrimination but does not expressly define and prohibit sexual harassment. The Committee notes the observations by the GTUC that sexual harassment is one of the least reported forms of discrimination and that the regular mechanism for administrative complaints is not adequate to address cases of sexual harassment due to the lack of confidentiality. The Committee further notes from the information provided by the Office of the Public Defender that no active steps have been taken towards the prevention of sexual harassment in the workplace, and that the Office of the Public Defender has recommended that the Ministry of Justice establishes a system of adequate sanctions. Regarding the enforcement of section 6(1)(b) of the Law on Gender Equality, the Government refers to the authority of the Gender Equality Council “to examine statements, documents and other information on violations of gender equality”. The Government also refers to the mandate of the Office of the Public Defender to monitor the observance of the principle of non-discrimination in general, on the basis of complaints or ex officio, but it is not clear whether that also covers the provisions of the Law on Gender Equality. ***The Committee asks the Government to take steps, together with workers’ and employers’ organizations, to prevent sexual harassment in the workplace, including the development of workplace policies and awareness raising among workers and employers, and to report on the progress made in this regard. It also asks the Government to take the necessary steps to ensure that section 6(1)(b) of the Law on Gender Equality is effectively enforced, and to provide information on any cases of sexual harassment dealt with by the courts or any other competent authorities, including information on sanctions and remedies provided. Noting that the reform of the Labour Code is still ongoing, the Committee also asks the Government to consider including a provision explicitly defining and prohibiting sexual harassment in the workplace similar to section 6(1)(b) of the Law on Gender Equality.***

***Article 2. Equality of opportunity and treatment between men and women.*** The Committee notes from the Government’s report on the Equal Remuneration Convention, 1951 (No. 100), that women’s economic activity and employment rates, while having increased respectively to 58.9 per cent and 52.9 per cent in 2015, remain low compared to men’s economic activity and employment rates, respectively 78.1 per cent and 67.6 per cent. In this regard, the Committee notes that, in its observations, the GTUC emphasizes the linkages between women’s low economic activity rate, the feminization of poverty and the high rate of violence against women. It also refers to persisting stereotypes and prejudices about women’s role in the family and in decision-making, and to women’s difficulties in combining work and family responsibilities. The GTUC further states that occupational gender segregation (the “glass ceiling”) is one of the most common forms of discrimination and, despite positive steps towards regulation, the promotion of women and their equal participation in economic development remain problematic. The Committee notes the adoption of the 2014–16 National Action Plan on Gender Equality and the Progress Report, published in 2017, on its implementation. The Committee notes from the Progress Report that training and awareness activities, including media campaigns, have continued to address traditional views and current stereotypes that hinder gender equality. The Progress Report also provides information on the increased number of women’s beneficiaries in projects to promote entrepreneurship, agricultural production and cooperatives, and in data collection on gender equality. However, the Committee also notes that according to the Report, progress has been slow and various factors hinder the realization of gender equality and the promotion of women’s rights, including societal attitudes and gender stereotypes, lack of institutional understanding about the importance of gender equality, lack of an effective legal framework and insufficient human and financial resources. ***The Committee asks the Government to step up its efforts to promote gender equality specifically in the field of employment and occupation, including through addressing stereotypes regarding women’s professional aspirations, preferences and capabilities, and their role in the family. The Committee also urges the Government to take steps to address the legal and practical***

*barriers to women's access to the broadest possible range of sectors and industries, at all levels of responsibility, and to promote a more equitable sharing of family responsibilities between men and women, and to report on the results achieved in this regard. Noting that the Progress Report recommended that the outstanding activities of the 2014–16 National Action Plan on Gender Equality should be implemented in the course of 2017, the Committee also asks the Government to provide information on the results thereof, as well as on any specific activities carried out by the Gender Equality Council in the field of employment and occupation. The Committee asks the Government to continue to provide statistics on the situation of men and women in different occupations, including at decision-making level, and in all sectors of the economy.*

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

## Hungary

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

*Article 1 of the Convention. Discrimination in employment and occupation. Legislation.* The Committee recalls its previous comments on the Labour Code 2012, in which it noted that the Code, although providing for the principle of equal treatment (section 12), does not explicitly prohibit discrimination nor does it enumerate any prohibited grounds of discrimination or refer to the prohibited grounds enumerated in the Equal Treatment Act 2003. The Committee notes the Government's indication that the Labour Code has to be read in conjunction with the Equal Treatment Act 2003, which complements section 12(1) of the Labour Code. The Committee recalls that, following an amendment to the Labour Inspection Act of 1996, which entered into force in 2012, the competence of the labour inspectorate no longer covers compliance with equal treatment provisions. This is now entirely a matter for the Equal Treatment Authority (ETA). The Committee previously noted that labour inspectors, who have regular access to workplaces and to workers and employers, have a crucial role in preventing, detecting and addressing discrimination and promoting equality in employment and occupation. This role is different from, but complementary to, the role played by the ETA. **Recalling that the implementation of the Convention presupposes a clear and comprehensive legislative framework as well as ensuring that the right to equality and non-discrimination is effective in practice, the Committee encourages the Government, in collaboration with workers' and employers' organizations, to consider amending the Labour Code to include provisions defining and prohibiting direct and indirect discrimination in all aspects of employment and occupation, on at least all the grounds listed in Article 1(1)(a) of the Convention, and to review the competences of the labour inspectorate with a view to extending them to cover the legislation addressing equal treatment. The Committee asks the Government to provide information on any developments in this respect.**

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

## Iceland

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)**

The Committee notes with *interest* the numerous measures taken by the Government, in collaboration with workers' and employers' organizations, to improve the application of the Convention by specifically addressing and reducing the gender pay gap. These measures include the adoption of a Plan of Action on Gender Equality regarding Wages (2012–16), the establishment of a task force to function as a forum for collaboration between the Government and the social partners on equal pay issues, the development of the Equal Pay Standard IST 85:2012 and a certification system on equal pay, and the undertaking of studies to identify the situation of women in the labour market and the causes of pay inequality. The Committee notes that, after much study and experimentation, the Act on equal status and equal rights of women and men No. 10/2008 has been amended by Act No. 56/2017 to require a company or institution with an average of 25 or more employees to acquire certification on an annual basis to confirm that the equal pay system meets the requirements of the Equal Pay Standard IST 85:2012. The outcome of certification together with a report is to be sent to the Centre for Gender Equality. The Act also provides that the organizations of employers and workers can negotiate the inclusion in collective agreements of the manner in which the equal pay audit will be conducted in accordance with the Equal Pay Standard IST 85:2012. The Act further requires the social partners to monitor that companies and institutions acquire the required certification and the maintenance by the Centre for Gender Equality of a public register of companies and institutions that have acquired certification. The Committee also notes that these measures have been supplemented to tackle other identified causes of the gender pay gap, including horizontal and vertical gender segregation in the labour market and within companies and the issue of balancing work and family responsibilities for both men and women. These other measures are addressed in the Committee's comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156). **The Committee welcomes the comprehensive approach taken by the Government and the social partners and asks the Government to provide detailed information on the specific outcomes and impact of the Plan of Action on Gender Equality regarding Wages (2012–16) and any follow-up that is envisaged or undertaken to continue to promote and guide action to reduce the gender pay gap. The Committee also asks the Government to provide information on the implementation, monitoring, enforcement**

*and impact of the new provisions of the Act on equal status and equal rights of women and men No. 10/2008 requiring equal pay certification, including any action taken by the Centre for Gender Equality and by the social partners, and any collective agreements that have taken up the certification process.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)**

*Article 1 of the Convention. Discrimination based on grounds other than sex.* The Committee recalls that it has been asking the Government to adopt comprehensive anti-discrimination legislation in employment and occupation covering at least all the grounds listed in *Article 1(1)(a)* of the Convention. The Committee notes that the Bill on Equal Treatment in the Labour Market which establishes equal treatment irrespective of race, national origin, religion or outlook on life, disability, invalidity, age, sexual orientation or sexual identity and the Bill on Equal Treatment concerning race and national origin, to which the Government has been referring for a number of years, still have not been submitted to the legislative assembly for approval. Noting the Government's indication that these draft laws are designed to give effect to the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and the Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the Committee draws the Government's attention to the importance of also ensuring these draft laws, when adopted, comply fully with the requirements of this Convention. ***The Committee therefore asks the Government to take the necessary steps to ensure that any new anti-discrimination law addresses employment and occupation on all the grounds covered by the Convention, including race, colour, sex, religion, political opinion, national extraction and social origin. The Committee urges the Government to take the necessary steps to ensure that new legislation is adopted in the near future and asks the Government to continue to provide information on any steps taken to this end.***

## **India**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)**

*Article 1(b) of the Convention. Equal remuneration for work of equal value.* In its previous observation, the Committee recalled that since 2002 it had been pointing out the more limited nature of the provisions of the Constitution of India (Article 39(d)) and the Equal Remuneration Act (ERA), 1976 (sections 2(h) and 4), when compared to the principle of equal remuneration for men and women for work of equal value as set out in the Convention. In particular, the Committee noted that under the above legislative provisions, the principle of equal remuneration is applied to "work of a similar nature", whereas the concept of "work of equal value" in the Convention requires a broader scope of comparison including, but going beyond equal remuneration for "equal", "the same" or "similar" work, in order to encompass also work that is of an entirely different nature, but which is nevertheless of equal value. The Committee also noted that the judicial interpretations of the ERA maintain a narrow reading of these provisions, which do not give full expression to the principle of the Convention. The Committee therefore urged the Government to take immediate and concrete measures to ensure that the legislation clearly establishes the right to equal remuneration for men and women for work of equal value in accordance with the Convention.

The Committee notes the information provided by the Government in its report which merely recalls the provisions of the ERA, and does not provide responses to the Committee's comments. The Committee also notes the Government's indication that no specific research has been undertaken by the Centre for Gender and Labour of the V.V. Giri National Labour Institute (VVG NLI) on the adequacy, effectiveness and implementation of the ERA. The Committee understands that the Government is in the process of consolidating its labour legislation in four codes, including a Wages Code, which will cover some of the matters addressed in the ERA, notably equal remuneration. ***Recalling that legal provisions that do not give expression to the concept of "work of equal value" hinder progress in eradicating gender-based pay discrimination, the Committee urges the Government to take specific measures without delay to ensure that the national legislation gives full expression to the principle of equal remuneration for men and women for work of equal value as enshrined in the Convention, including by amending the ERA as needed, and seizing the opportunity provided by the codification process to clearly incorporate the principle of the Convention into national legislation, and to provide information on the steps taken in this respect. The Committee reminds the Government that it can avail itself of ILO technical assistance to this end. The Committee also hopes that the VVG NLI will soon be in a position to share its findings and recommendations from its evaluation of the ERA, in particular with respect to the application of the principle of equal remuneration.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

*Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment.* In relation to its previous comments on the scope of application of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and

Redressal) Act 2013, the Committee notes the Government's indication that agricultural workers as well as workers from workplaces employing less than ten workers can file complaints concerning sexual harassment with the Local Complaint Committee established at the district level. The Committee notes that, in reply to its comments, no further information is provided concerning the practical application of the Act. The Committee notes that the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) raised concerns about continued sexual harassment and violence against women and girls, which has repercussions on their school attendance and participation in the labour market. CEDAW notes the stark increase in violent crimes against women, especially rape and abduction, and the escalation of caste-based violence, including rape, against women and girls (CEDAW/C/IND/CO/4-5, 24 July 2014, paragraphs 10(a)–(c) and 26). The Committee recalls that the Act only addresses sexual harassment against women and that the Committee had previously recommended that men should also be protected against this serious form of sex discrimination. ***The Committee asks the Government to provide specific information on the practical application of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, and any other measures adopted or envisaged to combat sexual harassment and violence against women related to the workplace. The Committee also asks the Government to supply information on the number of sexual harassment cases filed with internal and local complaints committees and their outcomes, including remedies provided and penalties imposed. It again asks the Government to review the impact of section 14 of the Act (action against malicious or false complaints or false evidence) on the willingness of women and other persons to file complaints of sexual harassment without fear of reprisals. This should also include information on reprisals and efforts to prevent reprisals at workplaces employing less than ten employees and in agricultural workplaces. The Government is also asked, when the opportunity of the revision of the Act arises, to amend the Act to ensure that men, as well as workplaces in the unorganized sector with more than ten employees, are also protected against sexual harassment in the workplace, and to provide information on any developments in this regard.***

***Articles 1–3. Measures to address discrimination based on social origin.*** The Committee notes the Government's indication that the quota system for scheduled castes in the public sector has contributed to increasing the representation of these groups in the public sector. According to the Government's report, whereas in 1965 scheduled castes represented 13.17 per cent of the personnel in government services, in 2012 they accounted for 17.3 per cent of the staff. In this regard, the Committee notes that the quota for scheduled castes in the public sector, in direct recruitment on an all-India basis by open competition, is 15 per cent. The quota in direct recruitment on an all-India basis other than by open competition is 16.66 per cent. The Committee notes that various "special recruitment drives" have been launched in recent years to fill the backlog of reserved vacancies for scheduled castes and tribes. The overall success rate of the last drive held in 2012 was 74.85 per cent. The Committee further notes the information provided by the Government concerning the various schemes put in place with a view to fostering education and economic empowerment of scheduled castes. According to the Government's report, the positive impact of these schemes is reflected in the enhanced representation of scheduled castes in the public sector. No information is, however, provided concerning the impact of these schemes beyond the fulfilment of the quotas.

Regarding affirmative action measures in the private sector, the Committee notes the information concerning some initiatives taken by the Apex Industry Chambers, such as providing skills training, entrepreneurship development programmes, and coaching and scholarships to more disadvantaged sections of society. The Government also indicates that some of the industry associates have prepared a voluntary code of conduct in which emphasis is placed on increasing opportunity in employment for disadvantaged sections of society through skills upgrading, continuous training and scholarships, among other matters. As regards the steps taken to intensify awareness raising on the prohibition and unacceptability of caste-based discrimination in employment and occupation, the Government indicates that it has addressed a set of recommendations, in its advisory capacity under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to the chief secretaries of all states/union territories (UTs). These recommendations include: (i) creating awareness through print and electronic media; (ii) developing a community monitoring system to verify cases of violence, abuse and exploitation and taking necessary steps to curb such cases; (iii) involving the community at large in creating and spreading such awareness; and (iv) organizing legal literacy and legal awareness workshops. The Committee notes that no information is, however, provided by the Government on the specific measures taken at central and local government levels to raise awareness about discrimination based on social origin in employment and occupation. ***Recalling that continuous measures are required to put an end to discrimination in employment and occupation due to real or perceived membership of a certain caste and noting the absence of specific information on the impact of the various schemes and measures, except for the implementation of the quota system, the Committee asks the Government to undertake a comprehensive assessment of the progress made to date in addressing caste-based discrimination in employment and occupation. It also asks the Government to identify the additional measures needed in order to advance equality of opportunity and treatment for all men and women, irrespective of social origin and to provide information in this respect. This information should include the results of any study conducted by the National Commission for Scheduled Castes with regard to education, training, employment and occupation. The Committee also asks the Government to step up its efforts to raise public awareness of the prohibition of caste-based discrimination and to provide information on the specific measures taken to this end, including steps taken in cooperation with the social partners. The Government is also asked to continue to provide information on the affirmative action measures adopted in the private sector to combat caste-based discrimination and to promote equality of opportunity and***

*treatment, irrespective of social origin, and on their impact. Noting the Government's indication that the implementation of the quota system for Dalit Muslims and Dalit Christians has been brought to the attention of the Supreme Court, the Committee further asks the Government to provide information on any progress made on this matter.*

*Manual scavengers.* The Committee refers to its previous observations in which it asked the Government to take vigorous and comprehensive steps to put an end to the continuing degrading and inhumane practice of manual scavenging and welcomed the adoption of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 (MS Act, 2013). The Committee notes that in December 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules (MS Rules, 2013) were also enacted. Concerning the implementation of the Act, the Committee notes the Government's indication that the Ministry of Social Justice and Empowerment has been holding review meetings with the concerned states and UT administrations with a view to raising awareness about the problem of manual scavenging; outlining the actions that need to be taken under the various provisions of the Act, and assessing the actions taken so far. The Government has also informed the Committee that a survey on manual scavengers in statutory towns has been completed in 27 of the 35 states/UTs and action is being taken to gather information on the rehabilitation needs of the identified scavengers and their dependants. The Committee notes that all manual scavengers, irrespective of their caste and religion, are eligible for the rehabilitation assistance under the Act, as specified in rule 11(22) of the MS Rules 2013. The Government also indicates that the manual scavengers who left their jobs prior to the coming into force of the Act can access concessional loans for self-employment and training under the schemes of the National Safai Karamcharis Finance and Development Corporation. The Committee, however, also notes that, according to the report of the UN Special Rapporteur on minority issues, the practice of manual scavenging persists despite the adoption of the Act, and is institutionalized through state practice, with local governments and municipalities employing manual scavengers (A/HRC/31/56, 28 January 2016, paragraph 72). *The Committee asks the Government to step up its efforts in order to ensure the full application of the MS Act 2013, in practice, and to provide comprehensive information on the steps taken to this end, including detailed information, disaggregated by sex, on the number of persons who are benefiting or have benefited from the rehabilitation measures provided for under the Act, and their impact. The Committee also asks the Government to provide information on the results of the assessments made concerning the actions taken so far by the states/UTs and to supply the results of the survey on manual scavengers in statutory towns where already completed. The Committee again asks the Government to provide information on the activities of the district and state and central level vigilance and monitoring committees, district magistrates and inspectors as regards the application of the Act, and on the number and nature of offences registered, investigations and prosecutions instigated, and penalties imposed on private and public bodies. The Government is also asked to supply information on the impact of the National Safai Karamcharis Finance and Development Corporation scheme on the rehabilitation of manual scavengers who ended this activity before the entry into force of the MS Act 2013.*

*Equality of opportunity and treatment between women and men.* The Committee notes that in its concluding observations the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has expressed concerns about the declining participation of women in the labour force, both in rural and urban areas, and the fact that women own only 9 per cent of land (CEDAW/C/IND/CO/4-5, 24 July 2014, paragraph 28). The Committee notes from the Government's report that, according to data for 2011–12, nearly 75 per cent of women in rural areas were engaged in agriculture, 10 per cent in manufacturing and 6.6 per cent in construction works. With regard to urban areas, according to the same set of data, 53 per cent of women were engaged in services and 29 per cent in manufacturing. The Committee notes the Government's indication that under the 12th Five-Year Plan (2012–17) the Ministry of Women and Child Development is implementing a specific scheme to support training and employment for women (STEP programme). *The Committee again asks the Government to identify the specific steps taken to promote equality of opportunity and treatment between men and women in employment and occupation, including improving access to land, credit and other material goods needed to engage in an occupation, and on their impact. The Committee is also asked to supply specific information on the impact of the STEP programme and other relevant schemes, including the National Rural Livelihood Mission, in advancing gender equality and addressing occupational gender segregation. The Committee also asks the Government to provide updated statistical information on the participation of men and women in employment and occupation, according to sector and employment status, in order to monitor progress over time.*

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

## Islamic Republic of Iran

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1972)**

*Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee recalls that for a number of years it has been noting that section 38 of the Labour Code is narrower than the principle in the Convention, as it provides for the payment of equal remuneration for men and women for equal work under equal conditions. The Committee notes from the Government's report that it has submitted a revision of section 38 of the Labour Code to the Islamic Consultative Parliament for adoption, after it was approved by the Cabinet of Ministers and

signed by the President on 3 December 2012. According to the Government, the amendment would provide that “women and men in the same workplace must be paid equal remuneration for performance of work of equal value”. The Committee notes that the amendment is currently under investigation by Parliamentary committees. The Committee welcomes the proposed amendment to include “work of equal value” into section 38. It would also like to draw the Government’s attention to the fact that the Convention includes, but does not limit application of the principle of equal remuneration for work of equal value to men and women “in the same workplace”, and provides that this principle should be applied across different enterprises to allow for a much broader comparison to be made between jobs performed by women and men. The Convention thus calls for the reach of comparison between jobs performed by men and women to be as wide as possible in the context of the level at which wage policies, systems and structures are coordinated (see the General Survey on the fundamental Conventions, 2012, paragraphs 697 and 698). ***The Committee hopes the Government will be in a position in its next report to indicate that section 38 of the Labour Code has been amended to include the principle of equal remuneration for work of equal value for men and women. It also hopes the Government will ensure that the principle of work of equal value applied to men and women in employment, as far as is consistent with wage fixing, and not only to those within the same workplace. The Committee also asks the Government to supply copies of the Directives issued on 30 December 2013 and 21 February 2015 which implement sections 38 and 49 of the Labour Code and address discrimination in payments, establish justice and pay parity and regulate the job classification system.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2016.

The Committee recalls its previous observation noting the detailed report of the high-level mission which took place from 4 to 8 May 2014, following the request of the Conference Committee on the Application of Standards in June 2013. The Committee recalls that in its conclusions, the Conference Committee urged the Government to take concrete and immediate action to end discrimination against women, and ethnic and religious minorities in law and in practice, to take decisive action to combat stereotypical attitudes, underlying discriminatory practices and to address sexual and other forms of harassment. It also underlined the need to take effective measures to ensure protection against discrimination based on political opinion and respect for freedom of expression and to address the continued absence of an environment conducive to freedom of association. The Committee recalls the Government’s willingness to continue to engage in dialogue on many of the issues addressed by this Committee and the Conference Committee and its intention to move forward in a positive direction to implement the Convention. It further recalls the strong statements made by President Hassan Rouhani in 2014 that no discrimination would be tolerated between men and women or in relation to the minorities in the country.

*Articles 1 and 2 of the Convention. Legal restrictions on women’s employment. Section 1117 of the Civil Code.* The Committee recalls that for a number of years it has been raising the issue of the need to repeal or amend section 1117 of the Civil Code, which allows a husband to prevent his wife from engaging in an occupation or technical profession which, in his view, is incompatible with the family’s interests or the dignity of him or his wife. The Committee notes that the ITUC reiterates its concern over the vague and broad nature of section 1117 which essentially allows a husband to exercise absolute control over his wife’s right to work. The Committee recalls that the Government indicated in its last report that section 1117 was to be revised and that section 18 of the Family Protection Act, which related to the implementation of this section, had been repealed. The Committee notes the Government’s statement that the request for an amendment, which it made after initial coordination with the judiciary and with the collaboration of the Parliament Research Center, is now before the Parliament Legal and Judiciary Committee for review. ***The Committee urges the Government to take steps to repeal or amend section 1117 of the Civil Code to ensure that women have the right in law and practice to pursue freely any job or occupation of their own choosing.***

*Draft comprehensive population and family excellence plan and other measures.* The Committee recalls its previous comment concerning a draft comprehensive population and family excellence plan (Bill No. 315) which established a hierarchy in hiring practices by both public and private institutions. Bill No. 315 provided that employment was to be given first to men with children, then to married men without children and then to women with children. While seemingly excluding single women, the Bill included provisions directed at support for maternity protection and women with children. The Committee notes the observations of the ITUC which detailed their concern at how Bill No. 315 directly and indirectly discriminates against women on the basis of sex, marital and family status. In addition to being directly discriminatory by excluding women, the ITUC observes that many provisions of the Bill were intended to encourage women to stay at home, such as extensions of maternity leave, possibilities for part-time work and provision of extra leave benefits for mothers with young children. The Committee further notes the concerns expressed by the ITUC that in practice women’s employment is being terminated after taking maternity leave and that they are already restricted in accessing employment by reason of the introduction of quotas for men and women in examinations for employment in the public sector, the result of which was that only 639 women secured educational posts out of the 3,703 posts available.

The Committee notes that the Government reports that this plan on population remains under review by a task force set up by the Parliament Cultural Committee.

The Committee further notes, however, that Bill No. 315 has been revised by a new draft of the Comprehensive Population and Family Excellence Plan (Bill No. 264) which is pending before Parliament as of May 2017. The new Bill No. 264 has the same objective as the former Bill, that is, to achieve a fertility rate of 2.5 children per woman by 2025. The Committee notes that while many provisions in the former Bill have been modified, Bill No. 264 maintains some of the hiring priorities: section 10 provides that governmental and non-governmental departments shall give priority in employment to married men with children and to married men without children and that employment of single persons is permitted only in the absence of qualified married applicants. Women with children are no longer mentioned as having priority. However, the Bill provides that in occupations such as medicine and teaching, due to gender segregation, women will be given priority, as an exception to this section, and where there is a need to consider women, priority will be given to women with children and married women without children. The financial incentive for private sector institutions following the priority hiring set out in section 10 has been removed. Pursuant to section 11, five years after the Act comes into force, priority will be given to married persons over single persons in faculty appointments in universities and higher education, research institutions and in the case of school teachers in public and private institutions at all levels. The Bill further restricts the issuance of licences for lawyers who practice family law to married persons. Bill No. 264 also maintains most of the provisions concerning support to women in relation to maternity protection and family responsibilities, such as extended paid maternity leave for nine months with a right to return. Section 22 provides that government and public and private non-governmental sectors are to adopt effective methods to accommodate female employees who are either pregnant or have children under 3 years of age to work flexible hours or to reduce hours, or to work from home, and it also provides for their job security. The new Bill also has provisions to promote healthy pregnancies and child and mother benefits and calls for all public and private offices and workplaces covered by the Labour Code to establish childcare services at the workplace or close to it. The Committee considers that many of the concerns raised by the ITUC on the discriminatory provisions and impact of Bill No. 315, also apply to Bill No. 264. The Committee also notes the adoption of a new Act on the Reduction of Working Hours for Women in Specific Circumstances, adopted on 23 August 2016. This Act provides for a small reduction of weekly hours of work for women who work 40 hours per week and who have children under the age of six years, a spouse or a child with a severe disability, or who occupy female-headed households, without loss of salary or benefits. It also provides for breastfeeding leave and it prohibits the employer from dismissing, transferring or replacing women who take advantage of the provisions of this law. ***While understanding the importance of a population policy, the Committee is deeply concerned about the approach taken to restricting women's access to employment, particularly single women and women without children, in contravention of the protection against discrimination set out in the Convention. The Committee strongly urges the Government to remove all of the restrictions on women's employment in the plan and to review the prioritization of men's employment and to ensure that in practice restrictive measures are not taken such as those referred to in the ITUC's observation, concerning the introduction of quotas which serve to limit women's employment in the public sector. The Committee asks the Government to ensure that the measures taken to promote maternity protection and the reconciliation of work and family responsibilities do not impair women's access to, retention in, or security of, employment.***

***Sexual harassment.*** The Committee recalls from the mission's report that the Government recognized that legal and practical measures were needed to prevent and address sexual harassment in employment, and that a Bill on Women's Security and the establishment of a national centre on the prevention of violence and the protection of women was to be examined by the Government. The Committee notes the Government's indication that in view of overlapping functions in the relevant bodies, including the President's Centre for Women and Family Affairs and the Judiciary, the Government decided not to establish the centre, but to continue to entrust issues of violence against women to the judicial and executive bodies. The Committee further notes the Government's detailed explanation of the general disciplinary provisions set out in the Labour Code, the Regulations on Determining Failure and Breach of Labour Disciplinary Directives and Regulations in the Workshops under section 27(2) of the Labour Code, which the Government attached to its report, and the sample disciplinary by-laws that have been developed to provide examples for workplace disciplinary committees to follow. The Government indicates that these disciplinary measures will cover actions within the scope of the Convention, including discrimination or prejudice and abuse of authority, position or business principles, and that the workplace disciplinary committees could rely on these disciplinary provisions to provide women with protection and redress against sexual harassment. The Committee notes, however, that so far there have not been any complaints or incidents of sexual harassment brought to the attention of, or observed by, the workplace disciplinary committees. The Committee also notes that the Act on Women's Rights and Responsibilities 2004 provides general protections for women's safety and prohibits exploitation and trade of women and girls in illegal occupations. ***While noting that the Labour Code and regulatory provisions provide general protection at the workplace, in order for that protection to be practically effective, the Committee urges the Government to amend the Labour Code to explicitly define and prohibit all forms of sexual harassment at work, both quid pro quo and hostile work environment and provide information on any action taken. The Committee asks the Government to clarify whether the Bill on Women's Security has been withdrawn along with the decision to establish the centre on prevention of violence and the protection of women. The***

***Government is also asked to provide a copy of the sample disciplinary by-laws that have been developed to provide examples for workplace disciplinary committees.***

*Equality of opportunity and treatment between men and women.* The Committee notes the Government's indication that women are being encouraged to participate in higher education; that women and girls in disadvantaged areas have a right to specific educational support and that women continue to have the right to participate in policy-making, decision-making, management of academic education, and in cultural and academic assemblies. The Government also reports on various measures taken to promote women in political decision-making, and reports on the first woman appointed as an ambassador of the country. The Government also refers to the establishment of a women's committee in the sixth Parliament in 2015 to address issues relating to women. Currently women account for 3 per cent of members of Parliament. The Government also indicates that women's participation in the urban and rural Islamic councils continues to increase. The Committee also notes the statistics on the number of female judges and prosecutors.

The Committee notes that the number of female students in universities grew from 145,000 in 1994 to 2 million in 2013 and that, as of 2012, 22 per cent of the overall faculty members were women, which is more than double the number in 2001. The Committee welcomes the Government's indication that it will reintroduce the internship plan that had been successful in 2006 and 2007 for young women and men. The Government also provides information on the development of skills of female jobseekers and those in the labour force through non-formal skills and vocational training for women in a range of training institutions. Between 1996 and 2011, the Committee notes that the number of technical and vocational training centres has substantially increased along with the diversity of the fields of training including electronics, chemical industries, general drafting as well as food technology. However, the Committee notes a decreasing trend in the enrolment of girls in technical and vocational schools between 2014 and 2016.

The Government indicates that within the sixth development plan it is addressing female-headed households and that measures are being taken to promote microbusiness and increase access for men and women from disadvantaged groups to banking facilities in order to alleviate poverty and support livelihoods. The Committee notes that the Government has implemented a number of measures in order to coordinate work and family responsibilities which appear to be targeted only at women and include: the housewives insurance plan; rural women's insurance, particularly for female-headed households; promotion of home work and self-employment for women, particularly in the agricultural sector. Nevertheless, the Committee notes that the economic participation rate of women remains very low at 12.7 per cent in 2014, having increased from 9.1 per cent in 1996. The Government reports that women represent nearly 30 per cent of the workers in agriculture and represent 51 per cent of the workers in the services sector. The Committee notes that the Government reiterates that it does not discriminate against women and believes that the rate of growth represents progress in the implementation of policies and programmes for women.

***The Committee asks the Government to continue to examine and address the obstacles that exist in practice, including cultural and stereotypical barriers to women's equality of opportunity and treatment, and to provide information on the steps taken to promote and encourage the participation of women in the labour market and decision-making positions on an equal basis with men, including up-to-date statistics disaggregated by sex and occupation in both the public and private sectors. The Government is also asked to continue to provide statistics on the number of women and men in the judiciary and the number of judgments handed down by female judges, and the fields concerned. The Committee also asks the Government to continue to provide information on steps taken to ensure that women's access to the labour market is not restricted to a limited number of jobs and occupations or to being housebound. Furthermore, the Committee asks the Government to continue to provide information on steps taken to support women's entrepreneurship, including those aimed at the disadvantaged groups, rural and nomadic women, and "female-headed households". The Government is also asked to continue to provide information, including statistics on the number of women and men enrolled as students in universities and vocational and technical training institutions and their fields of study.***

*Discrimination based on religion and ethnicity.* The Committee notes the information provided by the Government concerning the representation and respect given to the recognized minorities and the cultural integration of ethnic minorities. It notes that no new information on labour market participation or training of these groups is provided. The Committee recalls that for a number of years it has been raising the issue of the situation of the non-recognized minorities, in particular the Baha'i, and it notes that no new information has been provided by the Government in this regard. The Committee recalls that the practical impact of the Selection Law, which requires prospective state officials and employees to demonstrate allegiance to the state religion (*gozinesh*), remains an outstanding issue of concern. ***The Committee asks the Government to provide information on the participation rates of men and women of recognized religious minorities in employment and occupation. The Committee continues to ask the Government to take steps to eliminate discrimination in law and practice against members of non-recognized religious groups in education, employment and occupation, and to adopt measures to foster respect and tolerance in society of all religious groups. Noting that no information was provided on the role or action of the special adviser to the President for religious and ethnic minority affairs, the Committee trusts that the Government will provide such information in its next report. The Committee also asks the Government for information on the Selection Law and its application in practice to employment in both the public and private sectors, as well as to training and to educational institutions.***

*Enforcement.* The Committee notes the information on the labour inspection cases and the disputes handled by the labour dispute authorities, particularly concerning the application of the occupational classification system and the payment of wages. It notes that in 2015, 528 cases concerned the elimination of discrimination between men and women. The Committee also notes that training courses have been provided to workers and employers relevant to the Convention. ***The Committee notes the Government's request for technical cooperation and training in conjunction with the International Training Centre in Turin on international labour standards and its willingness to host a judges training. It trusts that this cooperation will take place in the near future. The Committee asks the Government to continue to provide information on the number and nature of claims and disputes filed related to employment discrimination, and to indicate the number of these cases that were based on sex discrimination. It further asks the Government to provide information on the activities of the Islamic Human Rights Commission, and any complaints submitted to it or the courts or any other administrative body concerning discrimination in employment and occupation. The Committee also asks the Government to continue to provide information on awareness raising, education and capacity-building measures aimed at employers and workers in order to ensure a better understanding of how to identify and address discrimination and to better promote equality in employment and occupation.***

*Social dialogue.* ***The Committee asks the Government to provide information on the activities and efforts of the employers' and workers' organizations in promoting the application of the Convention including through the various tripartite committees.***

## Israel

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1965)**

*Article 2 of the Convention. Application of the principle of the Convention to caregivers.* The Committee recalls its previous observations in which it referred to the possible discriminatory impact of the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court* (HCJ 1678/07) of 29 November 2009 excluding the application of the Hours of Work and Rest Law 1951, including the provisions on overtime pay, to foreign women workers providing care on a live-in basis. It also recalls that a number of recommendations were made to the Minister of Economy to improve the situation, including the following: (i) amending the Hours of Work and Rest Law and its regulations concerning overtime pay; (ii) providing caregivers with a comprehensive wage which would include payment for overtime of not less than 120 per cent of the monthly minimum wage; (iii) ensuring that the weekly rest would be no less than 25 hours; (iv) amending the Wage Protection Law 1958; and (v) abolishing the regulation which entitles the employer to deduct half of the sum for housing with respect to live-in caregivers. The Committee notes that the Government in its report reaffirms its commitment to find an appropriate solution to improve the situation of caregivers. The Government indicates that although there have been several significant increases of the minimum wage, which also included caregivers, it was found that implementing the abovementioned recommendations together with the increased minimum wage, would place a very heavy burden on the employers of caregivers, who are among the most financially weak segments of the population. The Government indicates that the process will take time and that it has decided to adopt a gradual approach towards improving the situation of caregivers. The Committee wishes to draw the Government's attention to the fact that, 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 (see General Survey on the fundamental Conventions, 2012, paragraph 670). ***The Committee encourages the Government to identify benchmarks or milestones to mark progress towards achieving the objectives of the Convention in a time-bound manner. The Committee takes due note of the Government's commitment to address the situation of caregivers through a gradual approach and asks the Government to continue its efforts, in cooperation with workers' and employers' organizations, in finding the appropriate solution to ensure that care work, which is a female-dominated sector, is not undervalued based on gender stereotypes, and to provide information on the specific measures adopted in this respect. The Committee also asks the Government to provide information on any measures taken to raise awareness among the users and beneficiaries of care services, of the need to recognize the value of care work and the importance of applying the principle of equal remuneration for work of equal value to this particular sector of employment. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.***

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

## Italy

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)**

*Article 1 of the Convention. Discrimination on the basis of sex. Pregnancy and maternity.* The Committee refers to its previous comments on the practice of having the worker sign an undated letter of resignation at the time of hiring for future use by the employer at their convenience (*licenziamento in bianco*), which affects in particular pregnant women. The Committee notes the Government's indication that the simplified procedure for resignation that was introduced with Legislative Decree No. 151/2015 did not extend to working parents with children up to three years of age,

for which the resignation continues to need the validation of the labour inspectorate to be effective. The Committee notes that, in 2014, the labour inspectorate validated 26,333 resignations and consensual terminations, 85 per cent of which concerned working mothers. The vast majority of these cases were resignations (20,774 out of 22,480) and affected women between 26 and 35 years of age (13,342 cases), confirming a trend previously identified. In 2015, the cases concerning working mothers increased to 25,620, out of which 17,592 concerned women between 26 and 35 years of age. The Committee also notes that the reasons put forward by women for their resignation continue to relate, for the largest part, to the impossibility of reconciling family responsibilities and working obligations due to the lack of available childcare or parental support, the high costs of childcare when available, and the failure to permit part-time work. The Committee notes the adoption of Legislative Decree No. 80/2015, on measures for the reconciliation of care, work and family life, and of Law No. 81/2017, which provides for measures aimed at promoting new flexible working arrangements for employees of the public and private sectors. It also notes the measures directed at promoting the reconciliation of family responsibilities and working obligations that are included in the three-year plans on affirmative actions of the public administrations referred to in the Government's report. ***The Committee asks the Government to provide information on the specific measures adopted under Legislative Decree No. 80/2015 and Law No. 81/2017 and their impact on reducing the incidence of resignations among working women. The Government is also asked to provide information on the impact in this respect of the measures implemented under the three-year plan on affirmative action by public administration. Noting that, in light of the disproportionate impact of the practice of the "licenziamento in bianco" on women with children of less than three years of age, the reasons provided by women when validating their resignation may conceal a structural pattern of discrimination against women on the basis of pregnancy and maternity, the Committee also asks the Government to step up its efforts to prevent and eliminate all discrimination against women based on these grounds, and to provide information on the specific measures taken to this end and their impact.***

***Article 2. Equality of opportunity and treatment irrespective of race, colour or national extraction.*** The Committee notes from the 2014 report of the Office for the Promotion of Equality of Treatment and Elimination of Discrimination based on Race and Ethnic Origin (UNAR) that 18.8 per cent of all cases of discrimination received by the UNAR in 2014 concerned discrimination at the workplace and more than half of these (53.6 per cent) were based on the grounds of race, colour or national extraction. The Committee notes the Government's indication that a National Action Plan against Racism, Xenophobia and Intolerance was adopted in September 2015 with the objective of identifying priority areas of intervention to prevent and address discrimination. The Plan envisages monitoring discriminatory practices in key areas through the collection of data over time and addressing cases of discrimination affecting access to education, health and labour, in both the public and the private sectors. ***While noting the information provided by the Government on the number of initiatives adopted over time to combat discrimination and promote equality of opportunity and treatment, the Committee observes the continued absence of specific information on their practical application and results, and asks the Government to gather and provide detailed information on the impact of the various initiatives undertaken and the main obstacles encountered, allowing the Committee to assess the progress made over time in realizing the objectives of the Convention. To this end, the Committee also encourages the Government to collect data disaggregated by ethnic origin on the distribution of women and men in the labour market in order to better monitor and assess the impact of the measures taken to prevent and address discrimination in employment and occupation based on race, colour and national extraction. Furthermore, the Committee again asks the Government to provide information on the activities of the Centre for research and monitoring of xenophobia and racial and ethnic discrimination (CERIDER), as far as education, training, employment and occupation are concerned, and their results. The Government is also asked to continue to provide information on the activities of the UNAR and the outcome of the cases of discrimination processed.***

***Roma, Sinti and Travellers.*** The Committee notes from the UNAR report, that 15.1 per cent of all cases of discrimination received by the UNAR in 2014 concerned Roma people, of which 2 per cent were work-related. It also notes that in 2017, the Institute of Statistics (ISTAT) released a survey of existing data sources concerning Roma, Sinti and Travellers in four municipalities (Naples, Bari, Catania and Lamezia Terme). The report finds that only approximately 38 per cent of the existing sources contain information on the situation of these groups in employment and occupation. The Committee notes that in 2014, the UNAR promoted a pilot initiative to promote access to employment for disadvantaged and discriminated against groups, which targeted beneficiaries from the Roma, Sinti and Traveller communities in four regions, namely Calabria, Campania, Puglia and Sicily. Under this initiative, 123 participants were provided with paid internships from September to December 2014. The Committee also notes the information provided by the Government on the Net-Kard project, which started in 2014 with the objective of disseminating guidelines on how to overcome discrimination against the Roma population. In 2015, the project produced four practical guides on preventing and addressing discrimination against the Roma for law practitioners, media professionals, non-governmental organizations and police services. The Committee further notes that awareness-raising campaigns to combat prejudice against the stereotyping of the Roma, Sinti and Travellers continue to be undertaken within the framework of the DOSTA campaign (Enough! Campaign, in Romani). The Committee notes that no information is provided in the Government's report concerning specifically the implementation of the National Strategy for the Inclusion of Roma, Sinti and Travellers. The Committee notes from the fourth opinion on Italy of the Advisory Committee on the Framework Convention for the Protection of National Minorities that, according to an assessment made by the European Commission in 2014, the implementation of the Strategy has not progressed significantly and that few concrete results could be demonstrated on

any of the four key areas covered by the Strategy (see ACFC/OP/IV(2015)006, 12 July 2016, paragraph 39). *In order for the Committee to be in a position to evaluate the results achieved by the various measures taken to promote equality of opportunity and treatment of Roma, Sinti and Travellers in employment and occupation, the Committee asks the Government to undertake a comprehensive assessment of the progress made to date in addressing the discrimination suffered by Roma, Sinti and Travellers in employment and occupation. It also asks the Government to identify the additional measures needed in order to advance further equality of opportunity and treatment for men and women of Roma, Sinti and Travellers groups. The Government is also asked to indicate how the implementation of these measures is coordinated and monitored, and supply information on their impact, including information on the results of the pilot initiative to promote access to employment for disadvantaged and discriminated against groups and any follow-up envisaged. Further, the Government is asked to provide information on the National Strategy for the Inclusion of Roma, Sinti and Travellers and the results of the research project on the integration of Roma, Sinti and Travellers carried out by INSTAT and the Department of Equal Opportunities, including any statistical data gathered in this context.*

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

## Jamaica

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)**

*Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee has been pointing out since 1997 that the Employment (Equal Pay for Equal Work) Act of 1975 does not include the concept of “work of equal value” as required by the Convention. The protection under the current law is narrower than the protection contained in the Convention in that it is limited to requiring the payment of equal remuneration for equal work, which is defined as work performed by men and women alike in which the duties, conditions of work and qualifications are similar or substantially similar, and the differences are not of practical importance and do not occur frequently. The Committee has also emphasized that the application of the concept of “work of equal value” is fundamental to the promotion and achievement of equal pay between men and women in employment and to reducing the gender pay gap. The Committee recalls its previous requests to the Government to review the Act of 1975 in light of the requirements of the Convention and to consider asking for technical assistance from the ILO. It notes from the Government’s reply that these requests have not been taken up by the Government. In this regard, the Committee must recall that in previous years the Government had indicated that it intended to review the Act of 1975. *The Committee urges the Government to undertake a review and to update the Employment (Equal Pay for Equal Work) Act of 1975 to bring its provisions and into full conformity with the Convention by welcoming the principle of equal pay for men and women for work of equal value. It hopes that the Government will consider asking the ILO for technical assistance in this regard. The Committee also asks the Government to report on the steps taken to this end, as well as on any other specific measures taken to examine and address the gender pay gap in the public and private sectors.*

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

## Japan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)**

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) which were annexed to the Government’s report received on 28 October 2016. It further notes the observations of the National Confederation of Trade Unions (ZENROREN), received on 3 October 2016, the observations of the Japanese Federation of Co-op Labour Unions (SEIKYO–ROREN), received on 24 May 2016, and the observations of Zensekiyu Showa–Shell Labour Union (ZSSLU), received on 8 February 2016.

### **Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)**

The Committee recalls the report adopted on 11 November 2011 of the tripartite committee set up by the Governing Body to examine the representation submitted by the ZSSLU (GB.312/INS/15/3). The tripartite committee concluded that further measures were needed, in cooperation with workers’ and employers’ organizations, to promote and ensure equal remuneration for men and women for work of equal value in law and practice in accordance with *Article 2 of the Convention*, and to strengthen the implementation and monitoring of the existing legislation and measures, including measures to determine the relative value of jobs (paragraph 57).

*Articles 1 and 2. Work of equal value. Legislation.* The Committee recalls that for a number of years it has been pointing out that section 4 of the Labour Standards Act, which provides that “an employer shall not engage in discriminatory treatment of a woman as compared to a man with respect to wages by reason of the worker being a woman”, does not fully reflect the principle of the Convention. The Government once again expresses the view in its report that it considers the requirements of the Convention to be met as long as the payroll system does not allow discrimination in wages between men and women solely on the basis of the worker being a woman. The Committee is

bound once again to observe that the protection against wage discrimination in section 4 is too limited because it does not capture the concept of “work of equal value” which is fundamental to the full application of the Convention. The Committee notes that JTUC–RENGO, ZENROREN and ZSSLU all hold the view that section 4 is inadequate to protect against the gender-based wage discrimination that exists in the country and that guidance on the interpretation of section 4 does not help address the indirect discrimination, for example based on job classifications, that constitutes a substantial cause of the gender pay gap. According to JTUC–RENGO, the law reflects Government policy to promote only equal pay for equal work between men and women, and does not address the gender pay gap resulting from job ratings, job types or employment status. The Committee also recalls that the Equal Employment Opportunity Act, which prohibits discrimination in recruitment, appointment and promotion, does not prohibit discrimination in remuneration.

The Committee notes the adoption of a new Law on the Promotion of Women’s Participation and Advancement in the Workplace (Law No. 64 of 2015) which entered into force on 1 April 2016. This Law calls on national and local government agencies and private sector employers with over 300 employees to: collect and analyse data on the ratio of women and men within the enterprise in areas such as new hires, hours worked, years of service and classification levels; and formulate and announce enterprise-level action plans containing quantitative targets and actions for their achievement within specified timeframes. The Act also provides for incentives and certification of companies that are proactive in the promotion of women. The Government considers that through the steady implementation of the Act, the ratio of women in management positions will increase and the disparity between men and women in the number of years of service will be diminished, thereby reducing the gender wage disparity which it believes is caused significantly by these two factors. From the Government’s report and the summary of the White Paper on Gender Equality issued by the Cabinet Office of the Government in June 2017, the Committee notes the information on the implementation of Act No. 64 of 2015, in both the public and private sectors, as well as other measures taken to encourage women’s participation in employment and to support the reconciliation of work and family responsibilities. While the Committee welcomes the new Act and hopes that it will serve to enhance the position of women in employment, particularly in career track and management positions, it notes that the Act is implemented through voluntary compliance, without the requirement for labour–management dialogue; the setting of goals and targets is also left to the discretion of each company without any encouragement to employers to address the pay scales of women and men based on the principle of equal remuneration for work of equal value. The Committee is taking up other aspects of the Act concerning the balancing of work and family responsibilities in its comments on the Workers with Family Responsibilities Convention, 1981 (No. 156).

***Given that the wage disparity between men and women narrowed only very slightly between 2012 and 2015 with a remaining wage gap of 26.3 per cent, the Committee once again urges the Government to take immediate and concrete action to ensure the existence of a legislative framework clearly establishing the right to equal remuneration for men and women for work of equal value. The Committee asks the Government to continue providing detailed information on the measures taken and progress achieved in this regard, as well as information on the application of the existing legislation which has a demonstrated impact on equal remuneration between men and women, including any administrative guidance issued. Noting the Government’s reliance on the implementation of the new Law on Promotion of Women’s Participation and Advancement in the Workplace to improve the employment situation of women in practice, the Committee asks the Government to consider adding “the ratio of women’s pay to men’s pay” as additional data required to be collected under the Act, analysed and included in the announced action plans. The Committee asks the Government to continue stepping up its efforts to tackle all the areas that directly and indirectly contribute to the significant gender pay gap, including horizontal and vertical occupational gender segregation.***

***Non-regular employment: part-time and fixed-term employment.*** The Committee notes that the majority of women continue to be employed in non-regular employment (part-time or fixed-term) and the majority of men continue to be employed in regular employment. The Government provides statistics indicating that 70 per cent of part-time workers are women. Women who work fewer than 35 hours a week represent 46.7 per cent of the total number of female employees. In its observations, ZENROREN points out that the number of non-regular workers is increasing, that the ratio of women to men non-regular workers is rising in certain fields, and that there are many women who wish to return from childbirth or childrearing into regular employment. It points to the low wages of non-regular employees in relation to their job content and indicates that there are no systems in place to correct the wage gaps between non-regular employment female dominated occupations and positions in regular employment. The Committee considers that the difference of treatment between regular and non-regular employment with respect to remuneration impinges on the application of the Convention. It notes that a number of initiatives have been taken to address issues related to non-regular employment, including amendments to the Part-time Workers Act, the Labour Contracts Act, the Dispatched Workers Act and the preparation of new equal pay legislation and guidance on equality between non-regular and regular employment. The ZSSLU indicates that the current reviews of non-regular work under these Acts do not take into account the gender discrimination dimension, nor are they aimed at tackling the structural gender inequalities created through the different treatment of regular and non-regular employment. The ZENROREN is of the view that the principle of equal treatment between regular and non-regular workers is still not applied. The ZSSLU questions whether the changes in the organization of dispatched workers, pursuant to the amendment of 2015 to the Dispatched Workers Act, will help address the disparities faced by these workers, many of whom are women. It believes that the provision of the Labour Contracts Act that requires the elimination of unreasonable discrepancies between workers with indefinite and fixed-term contracts may not be fully adequate for dispatched workers. ZSSLU further notes that the new equal pay legislation only guides policy and does not

ensure any rights of workers, nor does it provide for appraisals of the value of jobs. *Recalling that the Convention applies to both regular and non-regular employment, and taking into account the gender dimension of the employment structure, including the high number of women in part-time work and the resulting impact on the gender pay gap, the Committee asks the Government to provide information on the measures taken to address the undervaluation of female dominated occupations, to facilitate objective job evaluations and adjust remuneration levels across regular and non-regular employment classifications in both the public and private sectors, and on the measures taken to improve women's opportunities to enter and re-enter regular employment. The Committee understands that new draft guidelines on the employment of regular and non-regular workers are under development and asks the Government to supply a copy of the guidelines when they have been adopted and information on the measures taken to promote their application in practice. The Committee also asks the Government to continue providing statistics, disaggregated by sex, on participation and salary levels of men and women in temporary work, dispatch labour, as well as part-time, fixed-term and full-time indefinite employment.*

*Part-time work.* Further to its previous comments on part-time work, the Committee recalls the adoption of Act No. 27 of 2014 to amend the Part-time Workers Act, which extended the protection against discriminatory treatment to fixed-term, as well as indefinite duration contracts, where disparities are considered to be unreasonable. It further recalls that the provisions of the Part-time Workers Act before the revision were very limited and had little impact on women in part-time work. The Government indicates that the most recent revision should have the effect of improving the treatment and increasing the wages of part-time workers and that the Ministry of Health, Labour and Welfare is actively promoting the Act by providing advice to employers, but that no statistics on the impact of the Act are yet available. The JTUC-RENGO and SEIKYO-ROREN, however, question whether the revision will be sufficient to have a positive impact on gender equality and the JTUC-RENGO believes that guidelines are needed to clarify the interpretation of new section 8 concerning which disparities would not be permitted.

With respect to temporary and part-time local government officials, the Committee notes that women continue to be concentrated in temporary and part-time positions in local government and that job categories are highly gender segregated. The Committee notes that in 2012 women represented 57.3 per cent of temporary part-time staff in prefectures, 68.7 per cent in the Cabinet Office and 80.3 per cent in municipalities, where they were highly concentrated in occupations such as general office workers, nurses, childcare professionals and school cooks. It notes the Government's indication that local governments shall, under the terms of the notification of the Ministry of Internal Affairs and Communications of 4 July 2014, continue to ensure the treatment of temporary and part-time employees in accordance with the content of their duties and responsibilities. JTUC-RENGO observes that these workers are subject to different criteria for appointment on each workplace, even where the job types and work duties are the same. To resolve the confusion, it calls on the Government to undertake a survey of job types and work duties and to establish a framework for revising the pay scales of local government organizations. *The Committee asks the Government to provide information on how section 8 of the Part-time Workers Act has been interpreted, including any guidance issued, and its impact on part-time workers, including the number of men and women whose treatment and wage rates have changed as a result of the amendment. Noting that the amendment to the Labour Contracts Act on the right to request conversion from fixed-term to indefinite employment will come into effect in 2018, the Committee asks the Government to provide information on the conversions that have been requested, including from part-time to full-time, and from fixed-term to indefinite positions, and to provide this statistical information disaggregated by sex. The Committee also requests the Government to provide information on the measures taken to address the issues raised by JTUC-RENGO with respect to the classification of jobs in the local public service.*

*Career-tracking systems.* Further to its previous comments, the Committee reiterates its concern at the impact on pay disparity between men and women of the career-tracking system introduced by the employment management categories in the context of Guidelines issued under the Equal Employment Opportunity Act (EEO), due to the low representation of women in the main (integrated) career track. The Committee notes the observations of JTUC-RENGO that this system permits a gender-based classification system of employment management in which men are viewed as belonging to a main career track and women to a non-career track. The Committee notes that the EEO Guidelines were revised in 2014 to provide additional examples of how to manage the differences of treatment in the two tracks in accordance with the law. The Committee notes that both JTUC-RENGO and ZENROREN believe that the Guidelines only encourage the gender pay gap. The ZSSLU is of the view that these classifications limit the promotion and employment opportunities of women and are more responsible for the wage disparity than years of service. It adds that, despite the Guidelines, broad discretion is left to companies for the classification of employment management categories; that jobs should be objectively evaluated and compared across career tracks and not only within tracks; and, that mobility requirements should not be the determining element for placement in the integrated career track. In this regard, the Committee welcomes the consensus reached by the Government and representatives of employers and employees to widen the scope of unlawful indirect discrimination, in order to provide that transfers cannot be a requirement in recruitment, employment, promotion or change in job type, without reasonable grounds. The Committee also notes from the summary of court cases in the Government's report that the different employment management categories continue to operate in practice, at least in some cases, and have the effect of perpetuating gender-based salary classifications, and are not based on skills or job-related inherent requirements. *Given the persistently low representation of women in the main career track and the consequent impact on pay disparity, the Committee urges the Government to step up its efforts to*

*increase the percentage of women in the integrated career track, including both new hires and conversions from the general track, and to provide information on any measures taken to promote objective job evaluations across the tracks. The Committee also requests the Government to provide information on the impact of the changes on the widening of the scope of prohibited indirect discrimination based on transfer requirements and the manner in which the concept of “reasonableness” has been interpreted.*

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

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1995)**

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) which were annexed to the Government’s report received on 28 October 2016. It further notes the observations of the Japanese Federation of Co-op Labour Unions (SEIKYO–ROREN) received on 24 May 2016.

*Article 3 of the Convention. National policy.* The Committee notes with *interest* the adoption of a new Act on Promotion of Women’s Participation and Advancement in the Workplace (Act No. 64 of 2015) which came into force on 1 April 2016 and which aims to promote the advancement of women by providing an environment that makes it possible for men and women to balance their work and family life, and that calls for respect of women’s choice with regard to work and family life balance. The Act calls on national and local government agencies and private sector employers with over 300 employees: to collect and analyse data on the ratio of women and men within the enterprise in relation to various matters including taking childcare leave and family leave; and, to formulate and announce enterprise level action plans containing quantitative targets and actions to achieve the targets within specified timeframes. The Committee notes that the Act is implemented through voluntary compliance, without requirements for labour–management dialogue, and that the setting of goals and targets is left to the discretion of each company. In this regard, the Committee notes from the summary of the White Paper on Gender Equality 2017 issued by the Cabinet Office of the Government in June 2017, that pursuant to this Law, a number of action plans in both the public and private sectors contain targets for male employees taking childcare leave.

The Committee also notes the legislative amendments made to the Childcare and Family Care Leave Act to provide clarification and extend entitlements to give further effect to the Convention in a number of areas, including the extension to cover custodial and foster parents and encouraging men to take childcare leave. The Committee also notes the implementation of the Charter for Work–Life Balance, the Action Policy for Promotion of Work Life Balance, the revised Japan Revitalization Strategy of 2015, the Dynamic Engagement of All Citizens plans of 2015 and 2016 and the Guidelines for initiatives to promote active participation of female national public officers and work–life balance of 2014. While welcoming the enhanced policy emphasis on promoting work and family balance for workers, the Committee notes the observations of SEIKYO–ROREN underlining that in practice the application of the policy is frustrated by the reality of the long working hours of workers, in particular of men. It also notes the comments of the JTUC–RENGO and SEIKYO–ROREN on the restricted access of non-regular workers to the childcare and family leave provisions and support measures. The Committee refers to these points in more detail below. *The Committee asks the Government to continue to provide information on the implementation of the Childcare and Family Care Leave Act and on the Act on Promotion of Women’s Participation and Advancement in the Workplace, as well as the legislation concerning childcare and family care leave for national and local public employees. The Committee also asks the Government to continue to provide information on the contents of the various policy measures taken and the manner in which they are promoted, implemented and reviewed in relation to their objectives.*

*Articles 1 and 2. Application to all branches of economic activity and all categories of workers.* The Committee refers to its previous comments concerning the restricted application of the Convention to non-regular workers. It recalls that sections 5 and 11 of the Childcare and Family Care Leave Act enable fixed-term workers to take childcare leave and family care leave only if they meet certain requirements, and that the guidelines concerning measures to be taken by employers to facilitate the balance between work and family life of workers who care for children or other family members (Guidelines No. 509 of 2009) provide guidance as to who could fulfil these requirements. The Committee notes that following revision of the Childcare and Family Care Leave Act limiting requirements remain. It further notes that under the laws concerning childcare and family leave for national and local public service employment, childcare and other support measures are available to part-time workers, but limited to younger children when compared to entitlements of full-time employees. The Committee notes the observations of JTUC–RENGO that the Childcare and Family Care Leave Act continues to place conditions on fixed-term workers that essentially limit their ability to take such leave, citing a recent study which showed that the percentage of part-time and dispatched workers who take childcare leave and continue their employment is 4 per cent, as compared to 43.1 per cent for regular workers. It also notes the views of SEIKYO–ROREN concerning the lack of equal and balanced treatment of part-time workers as compared to regular employees and the negative impact this has particularly on women, who bear the largest burden of family responsibilities. The Government indicates in its report that guidance on leave of fixed-term employees was required to be provided in two cases in which corrections were made. It also indicates that information on the childcare system has been promoted particularly among fixed-term workers to facilitate their understanding and use of it. The Committee considers that fixed-term workers continue to be placed in a vulnerable position in claiming entitlements that facilitate the reconciliation

between work and family responsibilities. *The Committee asks the Government to strengthen its efforts to ensure the effective application of the Convention to non-regular employees including those in fixed-term and part-time positions in both the private and public sectors. It also asks the Government to continue to provide information on any reviews undertaken on the use by fixed-term and part-time employees of childcare and family care leave, any obstacles encountered and any follow-up measures taken to facilitate an improved application of the Childcare and Family Care Leave Law. The Government is also asked to provide statistical information disaggregated by sex on the number of fixed-term workers requesting and receiving childcare and family care leave in the private and public sectors.*

*Article 4. Organization of work and leave entitlements.* The Committee notes the praise by JTUC–RENGO of the 2016 revision of the Childcare and Family Care Leave Act for providing for segmented-family care leave, new exemptions from extra working hours, the relaxing of conditions for fixed-term contract workers taking childcare and other types of leave, and the implementation of regulations preventing workers from creating a toxic working environment when others take maternity, childbirth, child raising and other types of leave. The Committee notes from the 2014 Basic Survey of Gender Equality in Employment Management that the percentage of employees who took childcare leave was 2.3 per cent of male employees and 86.6 per cent of female employees, and that the percentage of employees who took time off for sick or injured children was 5.2 per cent of male employees and 25.3 per cent of female employees. Further, according to the 2012 Basic Survey of Employment Structure the number of employees who used the family care leave system was 3.5 per cent of men and 2.9 per cent of women. While noting the revision of the Child Care and Family Care Leave Act the Committee notes the low use of leave of care for sick and injured children by men. *Noting the low usage of the family leave by both men and women and the low use of childcare leave by men, the Committee asks the Government to take measures to ensure that both men and women are able in practice to take the leave provided in the legislation, and are encouraged to better balance the leave take-up between men and women. The Committee also asks the Government to continue to provide statistics on the types of leave taken, disaggregated by sex.*

*Long working hours.* The Committee has previously noted the importance of the overall reduction of working hours in order to enable men and women with family responsibilities to enter and remain in the labour market, and recalls that Paragraph 18 of the Workers with Family Responsibilities Recommendation, 1981 (No. 165), emphasizes the importance of the progressive reduction of daily hours of work and the reduction of overtime. In their observation, SEIKYO–ROREN indicates the difficulty of reconciling work and family given the reality of long working hours, pointing out that men only have on average 67 minutes to perform family responsibilities including 39 minutes for childcare. In their view the law should be revised to shorten the hours of work, and there should be an increase in premium pay for overtime work. The Committee notes the observations by the National Confederation of Trade Unions (ZENROREN) submitted under the Equal Remuneration Convention, 1951 (No. 100), advocating for a reduction in hours of work, because in reality the long hours of regular employment make it hard for women to take up such employment and take care of family responsibilities.

The Committee notes that pursuant to Rule 10-11 of the National Personnel Authority several measures have been taken and are under development for national public employees in regular service to exempt or limit overwork of employees who are taking care of a child or other family members. It further notes that several ordinances have been drafted to permit requests for exemptions from certain hours of work for caregivers. The Committee notes from the statistics provided by the Government that while overall average hours of work have been reducing since 2008, that is mostly accounted for by a decrease in the hours of part-time workers, and that as of 2015 the hours of regular workers remained around 2,000 hours, the same amount as indicated in the Government's previous report. The Committee also notes the high number of violations related to working time (27,581) under section 32 of the Labour Standards Act.

*The Committee asks the Government to step up its efforts to reduce annual working hours and to provide information on any measures under discussion to reduce hours of work or limit overtime in the private sector. The Committee also asks the Government to provide information on the practical implementation of the Labour Standards Act with respect to working hours and the Act on Special Measures for Improving Working Time Arrangements and Guidelines No. 108 of 2008 with respect to reconciling work and family responsibilities. The Government is also asked to continue to provide statistics on inspections and violations, and trends in the average number of hours worked by men and women disaggregated by contractual status and full- and part-time employment.*

*Article 8. Termination of employment.* The Committee recalls its previous comments and the conclusions of the Conference Committee on the Application of Standards concerning the adequacy of the measures to prevent and protect against discrimination on the ground of family responsibilities. The Committee notes that based on a Supreme Court judgment made in 2014, there was a notice of partial revision of the enforcement of the revised Equal Employment Opportunity Act and the Child Care and Family Care Act issued in 2015 (Notice No. 1 of 23 January 2015) to clarify that it is up to the Ministry of Health, Labour and Welfare to determine cases and provide guidance if disadvantageous treatment is found to occur within one year of the relevant event (childbirth, among other things). The Government indicates that it has informed workers and employers about the contents of this Notice. The Committee notes that in 2014 the number of consultations from workers regarding disadvantageous treatment by reason of pregnancy, childbirth, childcare leave, and so forth, submitted to the Prefectural Labour Bureau was 3,591, and that this number has been increasing year by year. *The Committee asks the Government to provide information on the practical application of the relevant sections of the Childcare and Family Care Leave Act prohibiting dismissal or otherwise disadvantageous*

*treatment, including information on administrative consultations and judicial decisions relating to these provisions and their outcome. The Committee also asks the Government to indicate any other measures taken to ensure that Article 8 of the Convention is fully applied in law and in practice.*

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

## Jordan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1966)**

*Article 1(a) of the Convention. Additional allowances in the public service.* The Committee recalls its previous comments that the limitations on women's access to family allowances pursuant to section 2 of Civil Service Regulation No. 30 of 2007 and the difference in allowance, based on sex, constitutes direct discrimination with respect to remuneration contrary to the Convention (see the General Survey on the fundamental Conventions, 2012, paragraph 693). The Committee recalls that the legal review, *Towards Pay Equity: A Legal Review of Jordanian National Legislation* (2013) carried out by the National Steering Committee for Pay Equity (NSCPE) recommended amendments to the Civil Service Regulation, including section 25. The Committee notes the adoption of Regulation No. 82 of 2013 concerning Civil Service which repeals the Civil Service Regulation No. 30 of 2007. The Committee notes that section 25(b) of the new Regulation concerning the Civil Service, as amended in 2014 by Regulation No. 96, continues to provide that the family allowance is granted to a married man and in exceptional cases to a woman, if her husband is incapacitated, or if she supports her children or is divorced and does not receive a child allowance for her children below 18 years of age. The Committee notes that the Government indicates that the new Civil Service Regulation applies the principle of equal pay for work of equal value to all civil service employees, irrespective of gender, but recognizes that section 25(b) constitutes a difference in wages between men and women. ***In light of the recommendations made by the NSCPE legal review, the Committee urges the Government to take steps without delay to amend Civil Service Regulation No. 82 of 2013 to ensure that women and men are entitled to all allowances, including the family allowance, on an equal basis, and to provide information on the progress made to this end.***

*Article 1(b). Equal remuneration for work of equal value. Legislation.* Since 2001, the Committee has been drawing the Government's attention to the need to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. In its previous observation, the Committee welcomed the recommendations of the legal review undertaken by the NSCPE and the July 2013 workshop to amend the provisions of the Labour Law of 1996, and its related Interim Act of 2010. The recommended amendments provided for equal remuneration for men and women for work of equal value "including work of a different type", and made reference to the use of objective job evaluation methods to determine whether jobs are of equal value. While noting the information provided by the Government regarding the further work undertaken by the NSCPE, and on the system of job description and classification in the public sector, the Committee notes that no steps appear to have been taken to amend the Labour Law of 1996 and the Interim Act of 2010. The Committee is addressing the issues related to the promotion of job evaluation methods in the public and private sector in its direct request. ***The Committee urges the Government to take the necessary steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee also reiterates its request to the Government to provide information on any measures taken or envisaged to promote objective job evaluation methods in the public and private sectors.***

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

## Republic of Korea

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)**

The Committee notes the observations from the Federation of Korean Trade Unions (FKTU), annexed to the report, and the Government's reply thereto.

*Articles 1 and 2 of the Convention. Gender pay gap. Legislation.* The Committee notes the statistics provided by the Government, according to which in 2015, women earned 63.8 per cent of men's hourly wages, establishing the gender wage gap at 36.2 per cent in comparison to 35.4 per cent in 2014. With regard to wages of workers in non-regular employment (workers in short-term and/or part-time employment), the Government further indicates that, in 2015, non-regular workers earned 65.5 per cent of regular workers' hourly wages. In this regard, FKTU adds that, as of August 2015, female non-regular workers only earned 36.3 per cent of male regular workers' wages. The Committee continues to consider that the overall gender wage gap, especially when comparing regular and non-regular workers, who are primarily women, remains significant. With respect to legislation, the Committee had noted previously that section 8(1) of the Act on Equal Employment and Support for Work-Family Reconciliation only provided for equal wages for work of equal value "in the same business" and that the Equal Treatment Regulation (No. 422), limited the possibility of comparing work performed by men and women to "work of a similar nature" further to its amendment in June 2013. With reference to its previous comments, the Committee recalls that the concept of "work of equal value" is fundamental to tackling occupational gender segregation in the labour market (according to which women and men are concentrated in different occupations and sectors of the economy) as it permits a broad scope of comparison between different jobs, including, but

going beyond, equal remuneration for “equal”, “the same” or “similar” work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value in its totality. Comparing the relative value of different jobs which may involve different types of skills, responsibilities or working conditions but which are nevertheless of equal value in its totality is essential in order to eliminate pay discrimination. This requires some method of measuring and comparing the relative value of different jobs. For instance, 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). The Committee further recalls that the application of the Convention’s principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers (see General Survey on the fundamental Conventions, 2012, paragraphs 672–679 and 695–699). ***In light of the persistent and high gender pay gap, the Committee once again urges the Government to take the necessary steps to bring the Act on Equal Employment and Support for Work–Family Reconciliation and the Equal Treatment Regulation into full conformity with the Convention so as to ensure that men and women receive equal remuneration not only for “work of a similar nature” but also for work that is of an entirely different nature but nevertheless of equal value in its totality, and that the scope of comparison between men and women extends beyond the same establishment or enterprise. The Committee also asks the Government to continue to analyse and provide statistical information on the gender wage gap, including data calculated on the basis of hourly and monthly wages, and data disaggregated by industry and occupation, regular and non-regular employment, in the public and private sectors.***

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

## Latvia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1992)***

The Committee notes the observations of the Free Trade Union Confederation of Latvia (FTUC) attached to the Government’s report.

*Article 4 of the Convention. Cooperation with workers’ and employers’ organizations.* The Committee notes from the report of the Government that the Tripartite Sub-council on Labour Affairs, on several occasions in 2014 and 2015, reviewed the Recommendation from the European Commission (EC) of 7 March 2014 on strengthening the principle of equal pay for men and women through transparency, with the aim of determining how it could be implemented. The FTUC has identified a number of measures that should be adopted to implement the EC Recommendation including: the insertion of specific provisions in collective agreements; establishment of joint committees with representatives of the employer and trade unions at the undertaking level to develop and introduce a transparent and equal pay system according to objective criteria; promotion of educational activities; and monitoring of the implementation of an equal pay system and any infringements of equal pay. The Committee notes from FTUC’s observations that in practice the trade unions are faced occasionally with challenges in ascertaining the full extent of the application of the laws prohibiting discrimination. In particular, FTUC points to the practice, for example in the energy sector, of remuneration systems being classified as confidential and thereby inaccessible to the trade unions except through petitioning the courts, state labour inspectorate or the Ombudsperson. The Committee welcomes that the Tripartite Sub-council on Labour Affairs has taken up the issue of equal pay, and hopes that follow-up action will result in the implementation of specific measures, such as those mentioned by FTUC, to address and reduce the significant gender pay gap in both the public and private sectors. ***The Committee recalls that, in general, transparency of pay and promotion structures have been identified as factors that could address pay structure differences and help reduce the gender pay gap. Given the particular difficulties in having access to pay information, the Committee encourages the Government to adopt measures requiring, as much as possible, direct access to 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 (see General Survey on the fundamental Conventions, 2012, paragraphs 712 and 723).***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)***

*Article 1(2) of the Convention. Discrimination on the basis of national extraction.* For a number of years the Committee has been expressing its concern over the discriminatory impact that the language requirements of the Law on State Language 1999 might have on the employment or occupational opportunities of minority groups, including the large Russian-speaking minority. The Committee recalls that section 6(2) of the Law on State Language requires that employees of private institutions, organizations and undertakings (companies), and self-employed persons shall use the official language if their activities “affect the lawful interests of the public” (public security, health, morality, health care,

protection of consumer rights and employment rights, safety in the workplace, or supervision of public administration). The Committee also recalls that pursuant to section 6(5) of the Law on State Language, the Cabinet of Ministers Regulation No. 733 of 2009 prescribes the level of proficiency of the Latvian language requirements. The Committee had previously noted that this provision affects a large number of occupations and posts. It had asked the Government to review and revise the list of occupations for which the use of the official language is required under section 6(2) of the Law so as to limit it to cases where language is an inherent requirement of the job. The Government has replied that no such list exists. ***Noting that the “lawful interests of the public” even with the limits prescribed in section 6(2) of the Law on State Language 1999 is a broad concept, the Committee asks the Government to consider drawing up a list of occupations (or indicators) which are considered to fall within the scope of section 6(2) thereby clarifying where Latvian language proficiency is considered to be an inherent requirement of the job. In this regard, the Committee emphasizes that the concept of inherent requirements of a particular job provided for in the Convention must be interpreted restrictively so as to avoid any undue limitation on employment and occupational opportunities for any group. The Committee also asks the Government to provide information on Latvian language classes and activities carried out in the country to benefit minority groups including the Russian minority.***

*Articles 1(2) and 4. Discrimination on the basis of political opinion.* The Committee has been drawing attention to the mandatory requirement in the State Civil Service Act 2000 which provides that to qualify as a candidate for any civil service position, the person concerned must not be or have not been “in a permanent staff position, in the state security service, intelligence or counterintelligence service of the USSR, the Latvian Soviet Socialist Republic (SSR) or some foreign State” (section 7(8)), or “members of organisations banned by laws or court rulings” (section 7(9)). The Committee notes the Government’s explanation that the restrictions are intended to ensure a loyal and politically neutral civil service and that they continue to be relevant and necessary. The Government further indicates that these provisions do not apply to all persons in the state administration but only to state civil servants who are persons that carry out functions of national significance such as policy development or the coordination of a sector of activity, or distribute resources or draft laws, and that at the end of 2015 there were only 11,725 such persons. While understanding the Government’s concerns and noting its explanations, the Committee draws attention to the fact that the law applies to any state civil service position and to employment by specified services whatever the level of responsibility. The Committee once again recalls that political opinion may be taken into account as an inherent requirement, under *Article 1(2)* of the Convention for posts involving special responsibilities in relation to developing government policy. It once again recalls that for measures not to be discriminatory under *Article 4* of the Convention, they must firstly affect an individual on account of activities he or she is justifiably suspected of having, or has been proven to have, undertaken. These measures become discriminatory when simply based on membership of a particular group or community. Moreover they must refer to activities that can be considered as prejudicial to the security of the State and the individual concerned shall have the right to appeal to a competent body in accordance with national practice (see General Survey on the fundamental Conventions, 2012, paragraphs 832–835). The Committee recalls that the principle of proportionality must apply and the exception under *Article 4* should be interpreted strictly. ***The Committee trusts the Government will soon be able to report that it has amended sections 7(8) and 7(9) of the State Civil Service Act or taken other steps to clearly stipulate and define the functions to which these sections apply. It further asks the Government to provide information on the application of sections 7(8) and 7(9) in practice, including information on the number of persons dismissed or whose application has been rejected pursuant to these sections, the reasons for these decisions and the functions concerned, as well as information on the appeal procedure available to the affected persons and any appeals lodged and their results.***

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

## Lebanon

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)***

The Committee notes that the Government’s report contains no reply to its previous comments. It is therefore bound to repeat its previous comments initially made in 2014. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 1 and 2 of the Convention. Gender pay gap.* The Committee notes that, according to the statistics published in October 2011 by the Central Statistics Office, the proportion of women in the active population was about 23 per cent (in 2009) and that in 2007 the gender pay gap was an estimated 6.2 per cent in services; 10.8 per cent in commerce; 21 per cent in agriculture; 23.8 per cent in manufacturing; and 38 per cent in transport and communications. The Committee recalls that it is particularly important to have complete, reliable and recent statistics on remuneration for men and women to formulate, implement and then evaluate the measures taken to eliminate pay gaps. With regard to wages in the private sector, the Government indicates that it contacted the General Confederation of Lebanese Workers (CGTL), the Association of Lebanese Industrialists (ALI) and the Association of Lebanese Business Leaders (RDCL) to obtain information on wages and any pay gap between men and women. ***The Committee asks the Government to take the necessary steps to gather, analyse and communicate such data in the various sectors of economic activity, including the public sector, and for the various occupational categories. The Committee also asks the Government to take specific measures to rectify gender pay gaps, including raising awareness among employers, workers and their organizations of the principle of equal remuneration for***

*men and women for work of equal value, and to provide information on any action taken to this end and on any obstacles encountered.*

*Article 2. Legislation.* For several years, the Committee has been asking the Government to give full legal expression to the principle of equal remuneration for men and women for work of equal value. The Government indicates in its report that the Committee's comments will be forwarded to the commission responsible for reviewing the legislation and working methods and that the new draft Labour Code (section 14) already reflects the Committee's concerns. ***While noting this information, the Committee asks the Government to ensure that the draft Labour Code explicitly reflects the principle of equal remuneration for men and women for work of equal value, with a view to permitting a broad scope of comparison encompassing not only equal or similar work, but also work of an entirely different nature performed by men and women. Hoping that the Government will be in a position to report progress on this matter in the near future, the Committee asks the Government to provide a copy of the relevant provisions, once they have been adopted.***

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

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

## Liberia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Article 1 of the Convention. Legislative developments.* For more than 15 years, the Committee has been referring to the fact that there was no legislation or national policy to implement the Convention. The Committee notes the adoption in June 2015 of the Decent Work Act which provides comprehensive protection against discrimination in the private sector. Specifically, the Committee notes that sections 2.4 and 2.7 of the Act define and prohibit direct and indirect discrimination against all persons who work or who seek to work on all the grounds protected under *Article 1(1)(a)* of the Convention, as well as on a range of additional grounds including tribe, indigenous group, economic status, community, immigrant or temporary resident status, age, physical or mental disability, gender orientation, marital status or family responsibilities, pregnancy and health status including HIV or AIDS status. It also notes that section 2.7(a), which prohibits discrimination against a person "who works or who seeks to work in Liberia in an employment practice", read together with section 2.9 of this Act, which defines "employment practice" broadly to include, inter alia, access to vocational training, access to employment, and particular occupations or jobs, including advertising, recruitment process, selection procedures, appointment, promotion, remuneration security of tenure and termination, extending the above prohibition to all aspects of employment. The Committee further notes that section 2.8 of the Act defines and prohibits both quid pro quo and hostile environment sexual harassment. ***The Committee welcomes the provisions concerning non-discrimination and equality in the Decent Work Act of 2015, and requests the Government to provide information on their application in practice, including details on specific obstacles encountered.***

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

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

## Luxembourg

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)***

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation.* The Committee welcomes the provisions of the Act of 3 June 2016 which amend the Labour Code (section L.241-1), the Act of 13 May 2008 on equal treatment for men and women, and the conditions of service for local and central government officials. These provide that "discrimination on the basis of a change of sex shall be deemed equivalent to discrimination on the basis of sex". However, the Committee notes again that by omitting colour, political opinion, national extraction and social origin, the Labour Code (section L.241-1) and the conditions of service for local and central government officials do not cover all the grounds of discrimination prohibited by the Convention. The Government indicates in its report that section 454 of the Penal Code defines discrimination as "any distinction made between persons on account of their origin, their skin colour, ... their political views ..." and that it considers that the grounds missing for the Labour Code and the conditions of service for local and central government officials are therefore covered. The Committee notes, however, that section L.244-3 of the Labour Code allows a reversal of the burden of proof in labour tribunals where facts exist that allow the existence of discrimination to be presumed, whereas under the Penal Code it is for the complainant to prove the existence of discrimination. In this regard, the Committee considers that criminal prosecution is generally insufficient to eliminate discrimination in the workplace because its particular nature, which arises from the specific features of the work environment (fear of reprisals, loss of employment, hierarchies, etc.) and because of the burden of proof, the latter often being difficult to discharge. In its General Survey of 2012 on the fundamental Conventions, the Committee observes that in the event of a complaint against discrimination, the burden of proof can be a significant obstacle, particularly as much of the information needed in cases involving unfair or discriminatory treatment is in the hands of the employer (paragraph 885). ***In order to enable workers to assert their rights effectively in relation to discrimination based on the grounds listed in the Convention, the Committee asks the Government to take the necessary steps to amend the list of grounds of discrimination prohibited by the Labour Code (section L.241-1); the Act of 16 April 1979 establishing the general conditions of service for central government officials (section 1bis) and the Act of 24 December 1985***

*establishing the general conditions of service for local government officials (section 1bis) in order to include colour, political opinion, national extraction and social origin. The Committee asks the Government to supply information on the progress made in this respect.*

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

## Malaysia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Articles 1(a) and (b), and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* For a number of years, the Committee has been noting that the national legislation does not reflect fully the principle of equal remuneration for men and women for work of equal value. It also noted that the definition of wages in the Employment Act 1955 and the National Wages Council Act 2011 does not encompass benefits in kind and excludes certain elements of remuneration as defined in the Convention. The Committee notes the Government's indication that the suitability of incorporating the principle of the Convention into its national legislation will be examined in the framework of the ongoing review of its labour legislation, and more particularly of the Employment Act. *Considering that giving full legislative effect to the principle of equal remuneration for men and women for work of equal value is of particular importance to ensure the effective application of the Convention, the Committee trusts that, in the course of the review of its labour legislation, the Government will take specific measures, in consultation with employers' and workers' organizations, in order to expressly incorporate the principle of equal remuneration for men and women for work of equal value into its national legislation. In this regard, the Committee requests the Government to ensure that its national legislation allows for the comparison not only of the same jobs, but also of work of an entirely different nature which is nevertheless of equal value, taking into account that equality must extend to all elements of remuneration as indicated in Article 1(a) of the Convention. The Committee requests the Government to provide information regarding the progress made in this regard. The Committee also reminds the Government that ILO technical assistance is available and requests the Government to consider forwarding a copy of the draft legislation to the Office for its review.*

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

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

## Mali

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)**

*Articles 1–3 of the Convention. Legislative developments. Definition of the term "remuneration". Equal remuneration for work of equal value. Objective job evaluation.* Since 2014, the Committee has been highlighting the fact that section L.95 of the Labour Code does not reflect the principle of the Convention. The Committee notes with *satisfaction* that Act No. 2017-021 of 12 June 2017, amending Act No. 92-020 of 23 September 1992 issuing the Labour Code, amends section L.95. New section L.95 contains a definition of the term "remuneration" which corresponds to that of the Convention and fully reflects the principle of equal remuneration for men and women for work of equal value since it provides that "any employer is required to ensure, for the same work or work of equal value, equal remuneration for employees, whatever their origin, sex, age, status or disability". It also provides that "occupational categories and classifications and criteria for occupational promotion must be common to workers of both sexes" and that "job classification methods must be based on objective considerations". *In view of the foregoing, the Committee requests the Government to adopt measures to promote awareness among workers, employers and their respective organizations, labour inspectors and judges of the application of the principle of equal remuneration for men and women for work of equal value as provided for in section L.95, as amended, of the Labour Code. It also requests the Government to indicate the measures taken, in collaboration with workers' and employers' organizations, to promote the development and use of objective job evaluation methods which are free of any gender bias, and to provide information on all progress made and any difficulties encountered in this regard.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)**

*Articles 1 and 5 of the Convention. Changes in the legislation. Definition of discrimination. Grounds of discrimination covered. Exceptions.* The Committee notes with *interest* the adoption of Act No. 2017-021 of 12 June 2017 amending Act No. 92-020 of 23 September 1992 issuing the Labour Code, which introduces provisions relating to discrimination in employment and occupation into the Labour Code. New section L.4 contains a definition of discrimination which corresponds to that of the Convention, covers the seven grounds of discrimination listed by the Convention, adds invalidity, disability and HIV/AIDS, and establishes the possibility of exceptions in accordance with *Articles 1(2) and 5 of the Convention (inherent requirements for a particular job and special measures).* *The Committee asks the Government to take the necessary steps to raise awareness among workers, employers and their respective organizations, labour inspectors and judges of the new provisions of section L.4 of the Labour Code relating to discrimination. It also asks the Government to provide information on the application of the provisions in practice,*

including the number of complaints made on this basis and the outcome thereof and the number and nature of cases of discrimination detected by the labour inspectorate.

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

## Mongolia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

*Articles 1 and 2 of the Convention. Work of equal value. Legislation.* The Committee refers to its previous comments in which it noted the lack of reference to the principle of the Convention both in the Labour Law and in the Law on the Promotion of Gender Equality (LPGE), and stressed the importance of seizing the opportunity provided by Labour Law reform to incorporate the concept of “work of equal value” into the national legislation and adopt a broad definition of “remuneration”, in accordance with the Convention. The Committee notes the Government’s indication that the new draft Labour Law reflects the principle of equal remuneration for men and women for work of equal value, and that this principle applied not only to the basic salary but also to any additional emoluments arising out of the worker’s employment. The Committee further notes from the Progress Report (October 2017) on the ILO–European Commission Project “Sustaining GSP-Plus beneficiary countries to effectively implement ILO standards and comply with reporting obligations” that the Government proposed to submit the draft revised Labour Law in late 2017 for Parliamentary consideration, and that key amendments, endorsed by tripartite working groups, provide for the inclusion of the principle of equal remuneration for work of equal value. ***The Committee welcomes the revisions introduced in the draft Labour Law and asks the Government to provide a copy of the new Labour Law once it is adopted.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

*Article 1 of the Convention. Legislative developments.* The Committee refers to its previous comments on the elaboration of the new Labour Law and notes the Government’s indication that the new draft Labour Law will, when adopted, contribute significantly towards bringing the national legal framework into line with the Convention, including as regards prohibited grounds of discrimination, the exclusion of women from certain occupations, sexual harassment, restrictions relating to the inherent requirements of the job, and the protection of workers with family responsibilities. ***The Committee welcomes these changes and hopes that the new Labour Law will soon be adopted and will be in full conformity with the Convention.***

*Exclusion of women from certain occupations.* The Committee recalls its previous comments concerning the exclusion of women from a wide range of occupations under section 101.1 of the Labour Law of 1999 and Order No. 1/204 of 1999 which was annulled in 2008. It notes the Government’s indication that this change was not well publicized, with the result that many employers still consider these restrictions to be in force. The Government also indicates that under the new draft Labour Law it will not be competent to adopt a list of prohibited jobs for women. ***The Committee asks the Government to take proactive steps to raise public awareness about the absence of restrictions on the recruitment of women in certain occupations and asks the Government to ensure that the new Labour Law will strictly limit the exclusion of women from certain occupations to measures aimed at protecting maternity.***

*Article 1(2). Inherent requirements.* The Committee refers to its previous comments concerning section 6.5.6 of the Law on Promotion of Gender Equality of 2011 (LPGE) which allows for sex-specific job recruitment “based on a specific nature of some workplaces such as in pre-school education institutions”. The Committee also noted that the scope of other provisions of the LPGE are overly broad in permitting sex-based distinctions (sections 6.5.1 and 6.5.2). The Committee notes from the Government’s report that such limitations are not contemplated in the new draft Labour Law which conforms to the concept of inherent requirements of a particular job enshrined in *Article 1(2)* of the Convention. ***The Committee urges the Government to review sections 6.5.1, 6.5.2 and 6.5.6 of the LPGE in order to ensure that they do not in practice deny men and women equality of opportunity and treatment in respect of their employment, and hopes that the provisions related to inherent requirements of the job in the new Labour Law will be in conformity with the Convention, and will be adopted soon.***

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

## Montenegro

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2006)**

*Article 1(b) of the Convention. Work of equal value. Legislation.* In its previous request, the Committee noted that, while the Law on Amendments to the Labour Act of 2011 explicitly provides, in section 77(2), for the principle of equal remuneration for work of equal value by guaranteeing each employed man or woman an equal wage for equal work or work of the same value performed with an employer, section 77(3) of the same Law continues to limit the concept of work of equal value to the same level of education, or professional qualifications, responsibility, skills, conditions and

results of work. The Committee also drew the Government's attention to the fact that the expression "with an employer" in section 77(2) of the Labour Law limits the application of the principle of equal remuneration to workers employed by the same employer. It had asked the Government to take the necessary steps so as to ensure that the legislation provides for equal remuneration not only between men and women workers undertaking the same or similar work, but also where men and women perform different work (including under different conditions and even in different establishments) that is nevertheless of equal value in its totality. In its report, the Government indicates that the Committee's comments on the concept of work of equal value, in particular section 77 of the Labour Law, will be considered by the tripartite Working Group established for the revision of the new Labour Law, which is envisaged under the Action Plan for negotiating Chapter 19 on social policy and employment and scheduled for adoption in the last quarter of 2017. The Committee wishes to draw the Government's attention to the fact that the concept of work of equal value entails comparing the relative value of jobs or occupations that may involve different types of skills, responsibilities or working conditions that nevertheless are of equal value in its totality (see General Survey on the fundamental Conventions, 2012, paragraphs 673, 675, and 677). **Consequently, the Committee urges the Government to seize the opportunity presented by the current revision of the Labour Law to amend section 77 so as to give full legislative expression to the principle of the Convention. It also requests the Government to provide information on all measures taken to this end.**

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

## Netherlands

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1971)**

The Committee notes the observations by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) received on 31 August 2016.

*Article 2 of the Convention. Measures to address differences in remuneration of part-time workers.* In its previous comments, the Committee requested the Government to provide details on the advice given by Social and Economic Council (SER) on labour market discrimination, including on how the advice addressed the recommendations made by the Task Force Part-Time Plus in 2010 to tackle differences in pay between men and women. The Committee recalls that the Task Force Part-Time Plus was established to address equal pay in a wider national context in which men are usually working full time and women part time. The Committee notes that the most recent study on equal pay published by the Central Bureau of Statistics (CBS) in November 2016 and referred to by the Government in its report, indicates that average hourly wages of part-time workers are relatively low compared to those of full-time workers, and a significant gender pay gap persists between full-time and part-time workers. The study found that in 2014, 32 per cent of the male workers and 79 per cent of the female workers were working part-time in the private sector, compared to 24 per cent of the male workers and 70 per cent of the female workers in the public sector. Part-time work is also more common in female dominated sectors, and the study indicates that of the five sectors with the highest number of part-time workers, restaurant and hotel and commerce sectors – where many women work – are those with the lowest hourly wages. While welcoming the research undertaken on equal pay differences and part-time work, the Committee notes that the Government's report does not contain information on specific measures taken to address differences in remuneration, including on any follow-up given to the recommendations of the Task Force Part-Time Plus. The Committee further notes that FNV and CNV point out that the unjustified difference in pay with respect to part-time work also exists with respect to other types of non-standard forms of employment, including fixed-term work, zero or undefined hours contracts, and self-employed workers undertaking regular work, and encourage the Government to broaden the study on the gender pay gap to other non-standard forms of work contracts and to examine the low number of legal proceedings initiated in this regard. With regard to the promotion of part-time work as a means to assist workers in reconciling work with family responsibilities, and to promote full-time employment of working parents, especially women, the Committee refers to its comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156). **Noting that the action taken and the follow-up given to the recommendations to reduce the gender pay gap with respect to part-time workers remain unclear, the Committee asks the Government to adopt more targeted measures to reduce the pay gap between men and women, taking into account the high number of women engaged in part-time work and their concentration in jobs that are generally lower paid, and to report in detail on the results achieved. Further, the Committee asks the Government to consider broadening the study on the gender pay gap to other non-standard forms of work contracts and to examine any obstacles that may exist for workers employed in non-standard forms of employment to initiate legal proceedings concerning pay inequalities between men and women, and to provide information on the steps taken in this regard.**

*Measures to address the gender pay gap.* The Committee previously requested information on any proactive measures taken including any follow-up given to recommendations with respect to an equal pay campaign, the enforcement of equal pay provisions by the labour inspectorate and the development of an equal pay policy when providing government support to financial institutions, as the gender pay gap in this sector was significant. The Committee notes from the CBS study on equal pay that the uncorrected gender pay gap – based on gross hourly wages – in the public sector narrowed from 13 per cent in 2010 to 10 per cent in 2014. In the private sector the gender pay gap however remained at 20 per cent. After correction (taking into account differences in part-time and full-time work, age,

level of occupation and management posts) a difference remained of 5 per cent in the public sector and 7 per cent in the private sector in 2014. The study also indicates that the gender pay gap increases with age and that, in female dominated enterprises in the private sector, average hourly wages are lower. Female managers in the private sector also earn significantly less than male managers and persisting occupational segregation negatively impacts women's wages in the health sector where the gender pay gap is the highest. In terms of measures to address the gender pay gap, the Government reports that the SER advice "Discrimination doesn't work!" issued in April 2014, emphasized the collective responsibility of government, trade unions and employers' organizations and other social actors to address discrimination in the labour market, and that in response, the Government presented the Action Plan on Labour Market Discrimination (May 2014) – which was updated in 2016. The Government reports that measures under the Plan have included: (i) the launching by the Labour Foundation of the Diversity Charter for employers in July 2015; (ii) the creation of a specific discrimination team within the labour inspectorate; and (iii) additional research on equal pay. The Committee notes the new periodic study on equal pay in the public and private sectors published by the CBS (November 2016) and the research undertaken in 2016 by the Netherlands Institute for Human Rights (the Institute) on equal remuneration between men and women in higher education institutions. While welcoming these initiatives, the Committee observes that, apart from the additional research on equal pay, the information provided by the Government is insufficient to assess the effectiveness of any of the proposed solutions for reducing the gender pay gap, including any follow-up given to the abovementioned recommendations. The Committee notes that FNV and CNV urge the Government to monitor at regular intervals the effectiveness of the measures concerning the gender pay gap and to hold consultations with the social partners on how to improve effectiveness. ***Noting that the uncorrected gender pay gap remains significant and that no further information has been provided by the Government on additional measures taken to address, in cooperation with the social partners, that part of the difference in remuneration that may be due to discrimination, the Committee urges the Government to provide such information in its next report. The Committee asks the Government to take measures, in cooperation with the social partners, to address the effects of occupational segregation in certain sectors of employment on the differences in pay between men and women, in particular in the health sector, and to adopt specific measures to address the gender pay gap in female-dominated enterprises in the private sector and at higher management level. The Committee encourages the Government to monitor, in consultation with the social partners, the effectiveness of the measures concerning the gender pay gap, and to provide information on the results achieved in this regard.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)***

The Committee notes the observations by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) received on 31 August 2016.

*Articles 2 and 3 of the Convention. National equality policy.* The Committee notes the Action Plan on Labour Market Discrimination in 2014, which was adopted following the advice provided by the Social and Economic Council "Discrimination doesn't work!" (published in 2014). The Plan, which was updated in 2016, emphasizes the collective responsibility of government, workers' and employers' organizations, and other social actors, in addressing labour market discrimination. It includes generic measures to combat discrimination in five tracks (enforcement; reporting; knowledge and awareness; diversity policy; and research), and additional measures targeting specific groups. The Committee notes the information provided by the Government on various measures taken to implement the Action Plan on Labour Market Discrimination, including: the Diversity Charter launched by the Labour Foundation in July 2015 to support employers and workers in the public and private sectors, and signed by more than 65 public and private companies; the labour anti-discrimination campaign in 2016 which focused on selection and recruitment, and which included a toolkit for employers; a Guide to improve public willingness to report on discrimination; the anti-discrimination team within the labour inspectorate; and a model agreement for hiring flexible labour, which includes a termination clause where a company receives a criminal conviction for employment-related discrimination. The Committee notes that while acknowledging that the Government has worked closely with the social partners to develop and support programmes to tackle discrimination in the labour market, the FNV and the CNV emphasize the need to demonstrate that the measures adopted meet their objective. ***Noting that progress reports on the implementation of the Action Plan on Labour Discrimination are being presented to Parliament at regular intervals, the Committee trusts that such reporting includes an evaluation as to whether the measures taken have produced effective results in achieving both formal and substantive equality in employment and occupation and in eliminating discrimination on the grounds listed in the Convention, and asks the Government to provide information in this regard.***

*Equality of opportunity and treatment of ethnic minorities in employment and occupation.* The Committee recalls its previous comments in which it noted the high unemployment rates among "non-Western" persons with a migration background (persons of whom both parents were born outside the Netherlands) and the need to address discrimination against certain ethnic groups, particularly those of Moroccan and Turkish origin, with respect to access to the labour market. Measures were needed to address the unexplained difference in the unemployment rates between non-Western minorities and native Dutch, to set specific targets in the context of specific programmes aimed at eliminating discrimination on the basis of race, colour and national extraction, and to assess the effectiveness of these programmes. The Committee notes from the Annual Report on Integration 2016 (Statistics Netherlands) that one in three employed

persons with a non-Western background work under flexible contracts compared to one in five native Dutch workers. While the unemployment rate among non-Western persons with a migration background, especially among Turkish and Moroccan women, declined in 2016 to 13.2 per cent (down from 16.5 per cent in 2014), it is higher among second generation migrants. Youth unemployment among persons with a non-Western background is particularly high (22 per cent compared to 9 per cent for native Dutch youngsters). Among the more highly educated with a non-Western background, unemployment rates are two or three times higher than educated native Dutch people. The Government has further provided data showing that non-Western persons with a migration background represented only 5 per cent of the employees in the public sector in 2015 (as compared to 8.5 per cent Western persons with a migration background and 86.5 per cent native Dutch). The Committee notes the observations by FNV and CNV that young persons of non-Dutch background, in particular of Moroccan, Turkish and Caribbean origin, still have difficulties in entering the labour market, and that discrimination in recruitment against people with a non-Dutch sounding last name continues to be a concern. In this regard, the Committee notes from the Government's report and information published by the Netherlands Institute for Human Rights (the Institute, hereafter) the relatively high number of cases received by equality and human rights bodies concerned with discrimination based on race (which includes colour, and national and ethnic origin). In 2015, 43 per cent of the complaints received by the Anti-Discrimination Services (ADVs) concerned racial discrimination, and decisions by the Institute relating to such discrimination increased from 10 per cent in 2014 to 23 per cent in 2016.

With regard to specific measures taken to address discrimination against persons with a non-Western background, the Government indicates that the Action Plan on Labour Discrimination contains various measures that focus on specific groups, including non-Western migrants. Generic measures include the launching of the Diversity Charter, the anti-discrimination campaign and the improvement of reporting and registration of incidences of discrimination to the (ADVs) and the Institute. In addition, the "Inclusive Government" Programme aims to promote inclusive organizations particularly in the areas of youth, employment, education, health care, welfare and the judiciary. The Government further reports that addressing discrimination is an integral part of the strategy on youth unemployment that has a specific focus on persons with low qualifications or with a non-Western background. Policies will concentrate on career orientation, cooperation and the active involvement of employers, and 75 employers have signed a "work agreement" to this end. Regarding diversity policies in the public sector, the Government refers to the relevance of the "Inclusive Government" programme, the Diversity Charter, and research on, and the sharing of, good practices on cultural diversity. While welcoming the ongoing efforts taken by the Government to address discrimination in the labour market, the Committee notes the observations by FNV and CNV that the impact of the measures adopted remains unclear and that the Government should monitor whether targets are reached in practice. While welcoming the information provided by the Government on the measures adopted in the context of a generic approach towards discrimination, the Committee notes the scant information in the Government's report on any specific measures taken to address discrimination on the basis of race, colour and national extraction against non-Western minorities, or on whether measures to promote their equality of opportunity and treatment in the labour market in practice have reached the expected results. *In these circumstances and noting the rise in cases of racial discrimination reported to the Institute and the ADVs and the observations communicated by the FNV and the CNV, the Committee asks the Government to evaluate the effectiveness of the programmes to eliminate discrimination and promote equal opportunity in training, skill development and employment of ethnic minorities, in particular of non-Western persons with a migration background, and to provide detailed information in this regard. The Committee also asks the Government to continue to assess the root causes of systemic and structural discrimination against minority groups, and to report on the measures taken and the results achieved to address the unexplained difference in employment between native Dutch and non-Western minorities, in particular men and women of Moroccan and Turkish origin.*

The Committee is raising other matters in a request addressed directly by the Government.

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1988)**

The Committee notes the observations by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) received on 31 August 2016.

*Article 4 of the Convention. Leave entitlements for men and women workers with family responsibilities.* The Committee recalls its previous comments in which it noted the need to promote a more equitable sharing of family responsibilities between men and women, especially in a national context where two-thirds of women work part time. The Committee notes that, in its report, the Government indicates that leave arrangements aim to facilitate a better combination of work and care tasks, and that flexible arrangements and part-time contracts make it possible to combine work and care and other responsibilities. The Committee notes that the Act of 17 December 2014 amending the Work and Care Act and the Act on Working Hours entered into force on 1 January 2015, and that the amendments introduce, among other things, a transferable maternity leave for the partner when the mother dies during childbirth (or shortly after) (section 3:1a(1)). Women have also been granted the possibility to take up the last weeks of maternity leave (from the seventh week after birth) part time and to spread it over a longer period (section 3:1(6)). The Government also reports that the father or the partner has been granted an extended right to take three days' unpaid leave after the birth of the child, which the employer cannot refuse, and that the statutory right to paternity leave will be further extended from two to five days' paid leave. Regarding parental leave (full time or part-time – 26 weeks for each child under 8 years of age), the

Government indicates that the requirement to be employed for at least a year has been deleted. Regarding short-term leave in case of emergencies and special personal circumstances, paid leave will also be possible for medical reasons (visit to a doctor or hospital or accompanying others) (section 4:1(2)(c)). Long-term leave has been expanded to cover not only care for the terminally ill but also for the ill in need of care (section 5:9), and the ten days short-term leave has been expanded to cover also care for second-degree family members and social relations (section 5:1 (2)). Regarding the take-up of leave entitlements, the Committee notes from the statistics provided by the Government that in 2013, 38,000 women and 27,000 men took short-term leave (compared to 36,000 women and 35,000 men in 2009); further, 3,000 men and 5,000 women took long-term care leave. Furthermore, parental leave was still taken up substantially more by women than by men employees (71,000 women employees and 29,000 men employees) although the overall take up has been steadily increasing since 2009 (41,000 women and 19,000 men employees).

The Committee notes that FNV and CNV express concern at the lack of paid care leave and severe budget cuts, including the fact that the Act on tax reduction for parental leave has been abolished. According to FNV and CNV, the high percentage of women in part-time jobs is related to relative expensive childcare and the lack of paid parental and paternity leave. Therefore long-term leave and parental leave should be paid leave, and paid leave for fathers after childbirth should be increased to ten days. Regarding care for other members of the family, FNV and CNV maintain that unpaid long-term care leave is not a solution for every worker with long-term care responsibilities. Referring to the amendments of the Social Support Act and the Long-Term Care Act, which entered into force on 1 January 2015, they indicate that these were accompanied with severe budget cuts in social support and long-term care for elderly people and people with disabilities. The Committee notes that in October 2016, the Social Economic Council (SER) published the advice “A working combination” in which it makes proposals to (i) organize time better; (ii) create effective day-care arrangements for school-age children; (iii) optimize leave take up in the first year after the birth of a child; (iv) improve the combination of work and care for persons in need; (v) improve lifelong learning; and (vi) develop a market for personal services. **Recalling the importance of equitable sharing of family responsibilities between men and women, the Committee asks the Government to adopt effective measures to encourage the take up of leave arrangements by both men and women workers with family responsibilities, and provide information in this regard as well as on any follow-up given to the recommendations by the SER to optimize leave take up, especially among fathers. In view of the repeated observations by the trade unions that in order to meet the needs of the employees, long-term leave and paternal leave should be paid leave, the Committee asks the Government to hold consultations with the social partners with a view to ensuring that leave entitlements are effective in enabling men and women to undertake without discrimination their family responsibilities, for example through granting paid long-term care leave and additional paid leave for fathers after childbirth (ten days), and to report on the progress made. Further, the Committee asks the Government to continue to provide information, disaggregated by sex, on the number of employees exercising their right to the various leave entitlements under the Work and Care Act.**

*Article 5. Childcare and family services and facilities.* The Committee recalls the importance of ensuring that family services and facilities meet workers’ needs and preferences. It also recalls that in its previous comments it had noted that the use of informal childcare had decreased but that efforts were needed to improve the affordability and quality of childcare services. The Committee notes the statistics provided by the Government in its report on the average number of children from single parent families and two-parent families, using the different type of childcare facilities in 2015 (day-care centres for children under the age of 4; after-school care for school-aged children; and childminders). The data show that day-care centres and out-of-school care are the facilities most used. The Government also reports that at the end of 2015, there were 427,000 households that received a federal childcare subsidy. Regarding the quality of childcare, the Government indicates that the Ministry of Social Affairs and Employment sets quality standards for childcare services and the public health service monitors the safety of childcare and compliance with standards. In its report on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Government also states that it is making efforts to improve the quality of childcare through stimulating parental involvement, raising stability and improving staff quality. To improve accessibility and affordability, fiscal incentives included an increase in the childcare allowance for families in which both parents work and make use of formal childcare (the employed person tax credit), and the extension to six months of the eligibility for childcare allowance during unemployment in 2016. In addition, the “income-based combination deduction” specifically aims at encouraging the secondary earner in the family, in practice mostly women, with children under 12 years of age to work and work more hours. The Committee notes that FNV and CNV observe that after the initial investments to make childcare more affordable, childcare has become more expensive for middle-income working families following severe budget cuts due to the financial crisis. This resulted in an increase of informal childcare arrangements. The FNV and CNV further indicate that in January 2016, the Social Economic Council (SER) recommended that stricter criteria for assessing training and education of care workers be established, care work be further professionalized and administrative procedures for care workers be decreased. The SER also advised that the reasons for the decreased use of formal childcare services be investigated, along with how accessibility, especially for lower income groups, could be improved. The FNV and CNV further state that the Netherlands Bureau of Economic Policy Analysis found that the supplement for childcare – which would increase in 2017 – would mainly benefit high-income groups already working many hours. **The Committee asks the Government to continue to provide statistical information, disaggregated by sex, on the availability of affordable and accessible childcare services and facilities including their utilization, that would allow the Committee to assess the progress made since 2015. It also asks the Government to**

*indicate any follow-up to the SER advice to professionalize care work and improve the education and training of care workers, with a view to improving the quality of care. The Committee further encourages the Government to undertake studies or surveys assessing whether the Childcare Act in fact responds to the specific needs and preferences of workers with family responsibilities in both low- and middle-income groups for childcare services and facilities, and to report on the progress made in this regard. The Committee also requests the Government to provide information on the number and nature of services and facilities that exist to assist workers with family responsibilities regarding other dependent members of their family.*

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

## **New Zealand**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)**

The Committee notes the observations by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand (Business NZ), submitted by the Government with its report.

*Article 1(b) of the Convention. Work of equal value.* The Committee refers to its previous comments in which it has been drawing the Government's attention to the fact that the Employment Relations Act (ERA) 2000, the Human Rights Act (HRA) 1993, and the Equal Pay Act (EPA) 1972, do not fully reflect the principle of the Convention, since they limit the requirement for equal remuneration for men and women to the same and substantially similar work. In its previous observation, the Committee noted that the New Zealand Court of Appeal, in *Terranova Homes & Care Ltd v. Service and Food Workers' Union Nga Ringa Tota Inc.* (CA631/2013[2014]NZCA516 of 28 October 2014), reached the conclusion that the EPA was not limited to providing for equal pay for the same or similar work. The Court held that, for comparing work exclusively or predominantly performed by women, it may be relevant to consider evidence of wages paid by other employers and in other sectors, and take into account any evidence of systemic undervaluation of the work concerned. Following the judgment by the Court of Appeal, the Employment Court was then expected to state general principles to be observed for implementing equal pay with a view to providing guidance for parties in negotiations, as provided for in section 9 of the EPA.

The Committee notes the Government's indication that all pay equity claims under the EPA are currently on hold as a result of the agreement reached in October 2015 between the Government and the social partners on the establishment of a Joint Working Group (JWG) to "develop principles for dealing with claims of equal pay for work of equal value" under the EPA. The Committee notes that the JWG has formulated a set of recommendations, which are under consideration by the Government. According to NZCTU's observations, these recommendations would eventually lead to amendments of the EPA and the ERA. The Committee notes that indeed an Employment (Pay Equity and Equal Pay) Bill was introduced to Parliament on 26 July 2017, with the purpose of eliminating and preventing discrimination on the basis of gender in remuneration and other terms and conditions of employment. The Bill distinguishes between equal pay claims or unlawful discrimination (non-remuneration) claims (section 11). It notes that pay equity claims relate to work predominantly performed by women when there are reasonable grounds to believe that the work has been historically undervalued and continues to be subject to systemic sex-based undervaluation (section 14(1) and (2)). The Committee notes that the Bill continues to restrict "equal pay claims" to "the same, or substantially similar, work" (sections 8(1)(a) and 9(1)(a) and 9(2)), and that "pay equity claims" relate to elements of sex-based differentiation in the rates of remuneration if the rate is less than that which would be paid to men employees "with the same, or substantially similar skills, responsibilities, and experience; and performing work under the same, or substantially similar, conditions; and performing work that involves the same, or substantially similar, degrees of effort" (sections 8(1)(b) and 8(3) and sections 9(1)(c) and 9(3)).

The Committee wishes to highlight once again that the concept of "work of equal value" that lies at the heart of the Convention 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. It follows that the jobs to be compared on the basis of objective factors (such as skills, efforts, responsibilities, conditions of work, etc.) may involve different types of skills, responsibilities or conditions of work, that can nevertheless be of equal value in its totality. As such, the principle of the Convention is not equivalent to the concept of "pay equity" as enshrined in the Bill, nor is it reflected fully in the provision relating to "equal pay for the same, or substantially similar work". *The Committee asks the Government to provide information on any developments related to the endorsement of the recommendations elaborated by the JWG and any follow-up actions, including possible amendments of the current legislation with a view to giving full expression to the principle of equal remuneration between men and women for work of equal value. In this context, the Committee asks the Government to take steps to ensure that the revised legislation, including the EPA, will fully reflect the principle of the Convention. The Committee also reiterates its request to the Government to provide information on how it is ensured that when applying the ERA 2000, and the HRA 1993, the broader concept of work of equal value enshrined in the Convention is taken into account. The Government is also asked to continue to provide information on any other judicial or administrative decisions relating to the principle of the Convention.*

*Occupational segregation and gender pay gap.* In its previous observation, the Committee noted the need for measures to address the undervaluation of work performed by women in the care sector, as well as in other sectors which

predominantly employ women, including special education support and social work. The Committee notes from the observations submitted by the NZCTU that, building on the judgment of the Court of Appeal mentioned above, unions representing care and support workers in the health and disability sector have submitted more than 2,500 individual equal pay claims to the Employment Court under the EPA. The Committee notes that, in 2015, the Government authorized the Ministry of Health to start negotiations with the concerned actors to address the equal pay claims pending in the Employment Court and, in 2017, an agreement was reached between the parties. The Committee notes, in particular, that the Care and Support Workers (Pay Equity) Settlement Act 2017 specifies minimum hourly wage rates payable by employers to care and support workers, and requires employers to provide assistance to care and support workers to attain qualifications. The Committee also notes the Government's indication that, in 2014, the Ministry of Health entered into negotiations with the home and community support sector, the district health boards and the unions in order to address claims concerning travel issues and, in particular, travel between clients, which affect pay levels. The negotiations have resulted in a settlement allowing all care and support workers in the home and community support sector to be paid for travel time and mileage, and in the adoption of the Home and Community Support (Payment for Travel between Clients) Settlement Act 2016. The Committee notes, in particular, that the settlement requires also looking into the transition of the workforce into a regularized workforce with guaranteed hours and appropriate training for qualifications, among other things. The Committee notes that NZCTU further refers to equal pay claims lodged by the union representing education support workers employed by the Ministry of Education, and by the public sector union – the Public Service Association (PSA) – on behalf of social workers working in Child Youth and Family Services. The NZCTU also indicates that negotiations have been ongoing for some time with union representatives of the clerical workers in the public health sector in the South Island District Health Board, but they have failed to make any progress. The Committee notes the observations submitted by the Business NZ, which recalls that care work was part of the job re-evaluation exercise carried out when the EPA was introduced in 1972 and highlights that the low pay level in this sector “is not so much a matter of undervaluation as of funding availability”, as there is a need to take into account users' ability to meet the costs of the services concerned. With regard to measures to address occupational gender segregation and its impact on the gender pay gap, the Committee also refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee wishes to draw the Government's attention to the fact that, 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 (General Survey on the fundamental Conventions, 2012, paragraph 670). ***While welcoming the settlements reached, the Committee, with a view to ensuring that wage settlements agreements address the issue of undervaluation of work performed by women in line with the principle of the Convention, asks the Government to provide information on the job evaluation methods used in the context of these settlements, and on the outcome of the pending equal pay cases submitted on behalf of the education support workers, social workers and clerical workers. The Committee also asks the Government to indicate any other measures taken to address the undervaluation of work performed by women in sectors in which they are predominantly employed.***

***Article 3. Job evaluation in the private sector.*** Referring to its previous observation, the Committee notes the Government's indication that no assessment has so far been undertaken on the use made by the private and public sectors of the pay and employment equity tools and resources available. In this regard, the Committee notes the information provided by Business NZ that many private sector employers make use of the various tools available, including the factor-based Hay assessment system. Business NZ indicates that these evaluations focus on the enterprise since evaluations across organizations risk undermining competition. The Committee also notes the NZCTU's view that stronger support from the Government is needed, including relevant training, in order to promote the use of the available pay and employment equity tools, as has been recommended by the JWG. The Committee recalls that where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities of comparison at the enterprise level or establishment level will be insufficient. Furthermore, the Committee also stresses the importance of ensuring that whatever methods are used for objective job evaluation, they are free from gender bias, and that the selection of factors for comparison, the weighing of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly (General Survey, 2012, paragraphs 698, 700–701). ***The Committee asks the Government to indicate any measures taken or envisaged with a view to promoting the use of objective job evaluation methods that are free from gender bias, including targeted training on the use of existing pay and employment equity tools and resources for workers and employers and their organizations in the private sector, and awareness-raising initiatives on the concept of “work of equal value”.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1983)***

The Committee notes the observations by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand (Business NZ), submitted by the Government with its report.

***Article 2 of the Convention. Access to employment and vocational training – Maori and Pacific Island people.*** The Committee notes the extensive information provided by the Government on the various initiatives undertaken with a view to improving the educational and skill levels of men and women belonging to Maori and Pacific Island people, as well as their employment opportunities, including the Ethnic People in Commerce New Zealand (EPIC NZ) initiative, the

Maori and Pasifika Trades Training Initiative, and the Youth Guarantee Scheme. The Committee notes, in particular, that during 2015, there were 135,941 funded trainees participating in industry training, of which 17.2 per cent were Maori, 8.4 per cent were Pacific Island people, and 33.4 per cent were women. It also notes that the number of funded New Zealand apprentices participating in industry training increased from 14,886 in 2012, to 25,238 in 2015, and the percentage of participants from Maori and Pacific Island people changed from 15.4 per cent and 2.7 per cent, to 14.6 per cent and 4.9 per cent, respectively. The Committee notes that women's participation declined from 11.7 per cent to 7.6 per cent. In this regard, the Committee notes the NZCTU's observation that training funding is targeted to male-dominated trades, such as plumbing, construction and electrician training.

The Committee notes from the Government's report that although the qualification achievement rates for Maori and Pacific Island people are improving, including in post-secondary school qualifications, they remain below those for other ethnic groups. The Government indicates that the new Tertiary Education Strategy (TES) 2014–19 sets out to enhance the achievement of Maori and Pacific Island people by recognizing their diverse needs. The Committee also notes that under the Te Puni Kōkiri Cadetships Initiative which aims to increase Maori achievement in higher-level qualifications, partnerships are established with employers in targeted industries, including energy, infrastructure telecommunications, transport/logistics, food processing, and knowledge-intensive manufacturing or primary industries (excluding the forestry sector). Further, the number of cadets remaining in employment has increased since 2009 from 71 per cent, to 100 per cent in 2013–14. The Committee, however, notes from the NZCTU's observations that, according to the Human Rights Commission Tracking Equality at Work tool, Maori and Pacific Island people are falling behind all other ethnicities, with young Maori and Pacific Island women being particularly marginalized. *The Committee asks the Government to continue its efforts to improve the educational and skill levels and employment opportunities of men and women belonging to Maori and Pacific Island people, and to provide information regarding their impact on addressing existing inequalities faced by Maori and Pacific Island people in practice. The Committee also asks the Government to provide information on the implementation of the He kai kei aku ringa partnership between the Crown and the Maori aimed at promoting Maori economic development, including information on any measures adopted or envisaged to ensure their right to engage, without discrimination, in their traditional occupations and livelihoods. The Committee also asks the Government to continue to provide statistics disaggregated by sex on the participation and completion rates of Maori and Pacific Island people in vocational training and education and their participation in employment in the public and private sectors.*

*Access to employment and vocational training – Women.* The Committee notes the Government's indication that in the aftermath of the earthquakes in Canterbury, the Ministry for Women's Affairs (MWA) established partnerships with a number of industries and community leaders and local training providers with a view to improving women's employment, helping meet skill shortages in Canterbury and promoting the involvement of women in trades. The Committee notes that in 2014 the Women in Trades Scholarship initiative was also introduced at the Christchurch Polytechnic Institute of Technology (CPIT), covering tuition fees for women studying towards a Level 1–4 Trades programme at CPIT. The Government indicates that female enrolments in trades training at CPIT increased from 50 in 2011, to 414 in 2014. The Government also states that in the December 2015 quarter there were 1,700 more women employed in the construction industry in Canterbury than in the same quarter in the previous year, accounting for 16.7 per cent of construction workers in Canterbury. The Committee notes the NZCTU's observation that, while the MWA's campaign to encourage women's access into sectors traditionally dominated by men has had some success in Canterbury, overall the number of women in apprenticeships remains low, with women representing approximately 10 per cent of all apprentices. The NZCTU indicates that the number of female industry trainees is relatively static with 40,474 in 2012 and 40,733 in 2014, whereas women represent more than 80 per cent of the trainees in the traditionally female-dominated industry areas of community support, services and hairdressing. The Committee notes the NZCTU's recommendation that additional measures would be required to increase the participation of women in the apprenticeship training schemes. The NZCTU further points out that women graduates predominate in health/medicine, education, law, management and commerce, while their numbers continue to be relatively low in engineering, information and related technologies. *The Committee asks the Government to continue taking steps to improve further the participation of women in industry training and the New Zealand Apprenticeships scheme, and to promote their access to areas of study where the numbers have traditionally been low, such as engineering, science and technology, and to provide information, including statistics disaggregated by sex, on any progress made in this regard.*

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

## Norway

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1982)**

*Article 1 of the Convention. Scope of application.* The Committee notes with *interest* the amendment to the first paragraph of section 12-10 of the Working Environment Act (WEA) extending the personal scope of the provision concerning the right to care for family members in the terminal stage of an illness from "close relatives" to a "person being close to the patient". This means that the personal scope now also includes friends, neighbours or other persons in

the local community with whom the patient has a close relationship and from whom they feel comfortable receiving care. The Committee notes that the 60 days of care benefit is per patient and may be used flexibly including being shared by several caregivers. The Committee also notes, in the second paragraph, the inclusion of the right to leave up to ten days per year for a worker to provide “necessary care” to their parents, spouse, live-in or registered partner and that the types of care that qualify as “necessary” is an assessment to be made in each specific case. The “necessary care” leave does not entitle the worker to a care benefit to compensate for a loss of income. ***The Committee asks the Government to continue to provide information on the practical application of section 12 of the WEA, including relevant statistical information and any assessments undertaken to evaluate the effectiveness of the WEA in promoting the balancing of work and family responsibilities for men and women without discrimination.***

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

## Pakistan

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)***

The Committee notes the observations of the Pakistan Workers’ Federation (PWF) received on 19 October 2017, referring to the need to revisit existing labour laws, and to ensure follow-up at the national and provisional levels. ***The Committee observes that the PWF refers to points previously raised by the Committee and requests the Government to provide its comments in this respect.***

The Committee notes that the Government’s report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2015.

The Committee notes the observations by the Pakistan Workers Confederation (PWC), received on 11 November 2013.

***Legislative developments.*** The Committee notes the 18th Constitutional Amendment, which devolved the power to enact laws related to labour from the Federal Parliament to the provincial governments. It further notes that existing federal laws remain in force until provincial laws are enacted and that a tripartite consultation committee has been established at the federal level to facilitate the implementation of the Convention by provincial governments. ***The Committee requests the Government to provide information on any development in this respect, in particular on the measures adopted by the tripartite consultation committee with regard to the adoption by the provinces of legislation for the implementation of the Convention.***

***Articles 1 and 2(2)(a) of the Convention. Legislation. Definition of remuneration.*** The Committee notes the Khyber Pakhtunkhwa Government’s Payment of Wages Act (2013), section 2(xiv), which defines wages as including all basic pay and statutory and non-statutory allowances, but excludes any contribution paid by the employer to any pension fund or provident fund, any travelling allowance or the value of travelling concession, any sum paid to defray special expenses, any annual bonus or any sums payable on discharge. The Committee recalls that *Article 1(a)* of the Convention provides a broad definition of remuneration which includes not only the ordinary, basic or minimum wage or salary, but also “any additional emoluments whatsoever payable directly or indirectly by the employer to the worker and arising out of the worker’s employment”. The definition also captures payments or benefits whether received regularly or only occasionally. It covers among others cost-of-living allowances, dependency allowances, travel allowances, housing and residential allowances, vacation allowances as well as allowances paid under social security schemes financed by the undertaking or industry concerned (see General Survey on the fundamental Conventions, 2012, paragraphs 686, 687 and 690). ***In order to fully apply the principle of equal remuneration for men and women for work of equal value, the Committee requests the Government to ensure that the Government of Khyber Pakhtunkhwa takes into account all the elements included in the definition of “wage” in section 2(xiv) of the Payment of Wages Act, as well as any other additional emoluments whatsoever.***

***Equal remuneration for work of equal value.*** The Committee notes that section 26 of the Khyber Pakhtunkhwa Government’s Payment of Wages Act (2013) provides that “there shall be no discrimination on the basis of gender, religion, sect, colour, caste, creed, ethnic background in the wages and other benefits for work of equal value.” ***The Committee requests the Government to provide information on the implementation of the Khyber Pakhtunkhwa Government’s Payment of Wages Act (2013) and its impact on the elimination of the gender wage gap. The Committee further requests the Government to provide information on measures taken to ensure that any new labour laws enacted by the other provinces give full expression to the principle of equal remuneration for men and women for work of equal value, allowing comparisons of jobs which are of an entirely different nature, but which are nevertheless of equal value, and that this principle applies both in the public and the private sectors, as well as to all aspects of remuneration, as broadly defined in Article 1(a) of the Convention.***

***Article 2(2)(b). Minimum wages.*** The Committee recalls that in its previous observation it had requested the Government to ensure that the setting of minimum wages was free from gender bias. The Committee notes in this respect that section 10 of the Minimum Wages Notification (2012) issued by the Khyber Pakhtunkhwa Government’s Minimum Wages Board stipulates that “An adult female worker shall get the same minimum wages as a male worker receives for work of equal value.” The Committee notes that section 18 of the Khyber Pakhtunkhwa Government’s Minimum Wages Act (2013), which enumerates the prohibited grounds of discrimination for the purposes of the Act, does not include sex. The Committee recalls that there is a tendency to set lower wage rates for sectors predominantly employing women and, due to such occupational segregation, particular attention is needed in setting sectorial minimum wages to ensure that the rates fixed are free from gender bias. ***The Committee requests the Government to indicate how these two provisions are articulated in order to ensure that minimum wage setting in the province of Khyber Pakhtunkhwa is free from gender bias. The Committee further requests the Government to provide information on measures taken to ensure that the setting of minimum wages by other provinces is free from gender bias.***

***Articles 2 and 3. Objective job evaluation.*** The Committee notes that according to the PWC, most employers do not utilize objective job appraisal schemes. The Committee notes that in its report, the Government refers to the work of the Provincial Women Development Departments, which includes awareness campaigns as well as workshops leading to the preparation of gender responsive policies. It notes that the Provincial Women Development Departments have also established task forces to monitor organizations to ensure the payment of equal remuneration. ***The Committee encourages the Government to take measures to ensure that objective job appraisals on the basis of work performed are integrated into the new provincial***

*labour legislations and to provide information on any developments in this regard, including measures taken by the Provincial Women Development Departments in developing and implementing objective job appraisal mechanisms for use in both the public and private sectors.*

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

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)***

The Committee notes the observations of the Pakistan Workers' Federation (PWF) received on 19 October 2017, referring to the acts of discrimination based on political opinion against dissidents of the ruling party and cases of discrimination in education, employment and occupation. *The Committee observes that the PWF refers to points previously raised by the Committee and requests the Government to provide its comments in this respect.*

The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2015.

The Committee notes the observations by the Pakistan Workers Confederation (PWC), received on 10 November, 2013, concerning discrimination against women, who concentrate mainly in the informal sector and the lack of enforcement of labour legislation.

*Article 1 of the Convention. Legislation. Prohibition of discrimination.* The Committee notes the 18th constitutional amendment, which devolved the power to enact laws related to labour from the federal Parliament to the provincial governments. It further notes that existing federal laws remain in force until provincial laws are enacted and that a tripartite consultation committee has been established at the federal level to facilitate the implementation of the Convention by provincial governments and that the drafting of the Employment and Service Conditions Act has been concluded at the federal level and sent for consideration to the provincial governments. The Committee notes the series of legislation adopted by the Khyber Pakhtunkhwa Provincial Government in 2013 that prohibit discrimination on the basis of different grounds. In this regard, the Committee notes with interest that the ground of caste has been included in the list of prohibited grounds of discrimination by this province. The Committee notes, however, that political opinion and national extraction are not included as prohibited grounds of discrimination. It is not clear either if the legislation applies to all aspects of employment, namely vocational training, access to employment and to particular occupations, and terms and conditions of employment as provided for in *Article 1(3)* of the Convention. The Committee highlights that 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 (see General Survey on the fundamental Conventions, 2012, paragraph 743). *The Committee requests the Government to take the necessary measures to ensure, including through the tripartite consultation committee established at the federal level, that all new labour laws adopted by the provinces include provisions expressly defining and prohibiting direct and indirect discrimination, in all aspects of employment and occupation, for all workers, on all the grounds set out in Article 1(1)(a) of the Convention including political opinion and national extraction. The Committee also requests information on any development in this regard.*

*Sexual harassment.* The Committee notes the Government's indication that in the framework of the implementation of the Harassment at the Workplace Act (2010), ombudspersons have been appointed at both federal and provincial levels and that Women Development Departments are responsible for awareness-raising programmes. The Committee further notes the enactment by the Government of Punjab of the Punjab Protection Against Harassment of Women at the Workplace Act, 2012. *The Committee requests the Government to provide information on the implementation of the Protection Against Harassment of Women at the Workplace Act (2010) and the Punjab Protection Against Harassment of Women at the Workplace Act, 2012 and any other relevant legislation adopted by the other provinces so as to protect men and women equally against sexual harassment. Finally, the Committee requests information on the number and nature of complaints lodged and the remedies provided and sanctions imposed, and asks the Government to provide more information regarding the content of public awareness campaigns on sexual harassment conducted by provincial Women Development Departments.*

*Article 2. Equality of opportunity and treatment between men and women.* The Committee notes that according to the Labour Force Survey 2012–13, female participation in the Pakistan labour market remains low at 21.5 per cent of the total workforce, and that only 28.3 per cent of these women work in the formal sector. The Committee further notes that in its concluding observations, the Committee on the Elimination of Discrimination against Women highlights the low participation of women in the formal sector, depriving women of access to social security and benefits (CEDAW/C/PAK/CO/4, of 1 March 2013, paragraph 29). In this regard, the Committee notes that the Provincial Government of Punjab has adopted the Punjab Fair Representation of Women Act of 2014, which includes measures such as quotas, to give fair and proportionate representation to women in workers' bodies and public entities. The Punjab Women Empowerment Package of 2012 provides for measures such as a 10 per cent quota for public service employment, education in science and technology, and establishment of day care centres and transport facilities for female employees. Besides, the National Vocational and Technical Training Commission provides training to both men and women. The Committee also notes that the Government indicates that the Domestic Workers (Employment and Rights) Bill (2013) is under consideration by Parliament, and that the Sindh Industrial Relations Act (2012) has included agriculture and fisheries sectors into the formal economy in that province. *The Committee requests the Government to provide more information, including statistics, on the impact of these measures in the participation of women in the labour market and their transfer from the informal to the formal economy. The Committee further requests the Government to continue to take specific measures to enhance the participation of women in the labour market. It also requests the Government to provide information on any development in the adoption of the Domestic Workers (Employment and Rights) Bill (2013).*

*Equality of opportunity and treatment in employment and occupation of minorities.* The Committee recalls its previous requests to provide information on the progress made in implementing the quota for employment of minorities under Office Memorandum No. 4/15/94-R-2, dated 26 May 2009. The Committee notes the Government's indication that the Punjab Province has implemented a 5 per cent quota for minority members in the public sector. The Government further indicates that similar provisions are being implemented in other provinces. *The Committee requests the Government to provide information on the concrete impact of the quotas established at federal and provincial level on the employment of non-Muslim minorities. It*

*requests that this information include statistical information on the number of minority workers employed, disaggregated by sex, sector and minority group. The Committee further requests the Government to provide information on measures taken by the federal tripartite committee to facilitate this process. Finally, the Committee requests the Government to provide information detailing who is considered to belong to the Scheduled Castes, including whether they are non-Muslim.*

*Discrimination based on social origin.* The Committee recalls its previous comments regarding the persistent de facto segregation and discrimination against Dalits, and the need to take effective measures toward the elimination of such discrimination in employment and occupation. In this regard, the Committee noted previously that some legal provisions adopted by the Khyber Pakhtunkhwa Provincial Government in 2013 prohibit discrimination based on caste. *The Committee requests the Government to provide information on the impact of the prohibition of discrimination, including statistics disaggregated by caste and sex on the employment of Dalits in the Khyber Pakhtunkhwa Province. The Committee also requests the Government to provide information on other measures adopted by the federal Government and the provinces to prohibit discrimination against Dalits and promote their inclusion in the labour market, including through the federal tripartite committee.*

*Discrimination based on religion.* The Committee recalls its comments expressing concern regarding section 298C of the Penal Code (“blasphemy laws”) that singles out members of the Ahmadi minority, as well as the practice of requiring Muslims applying for a Pakistani passport to sign a declaration to the effect that the founder of the Ahmadi movement is an impostor, which has the effect of denying the Ahmadi minority from obtaining passports identifying them as Muslims. The Committee notes in the Government’s report the general statement that laws in Pakistan do not discriminate against religious beliefs. *The Committee urges the Government to take immediate steps to amend its discriminatory legal provisions and administrative measures, and to actively promote respect and tolerance for religious minorities, including the Ahmadi, and to provide information on any progress made in this regard. The Committee once again requests the Government to provide information on the access to employment situation of religious minorities, including those defined in section 260(3)(b) of the Constitution.*

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

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

## Russian Federation

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)***

The Committee notes the observations of the Confederation of Labour of Russia (KTR) received on 31 October 2017, which were sent to the Government for its comments.

The Committee notes that the Government’s report contains no reply to its previous comments. It is therefore bound to repeat its previous comments, initially made in 2014.

The Committee notes the observations of the Confederation of Labour of Russia (KTR) received on 31 October 2014, which were sent to the Government for its comments.

*Articles 1 and 2 of the Convention. Gender pay gap and its underlying causes.* The Committee notes that the Government’s 2014 report does not contain information in reply to its previous comments. The Committee also notes the Government’s report submitted in 2011, which indicates that, according to the statistical information provided by the Federal State Statistics Service (Rosstat), there is a wide gender wage gap (36 per cent), with the average wages of women amounting to 64 per cent of those of men in 2011. The main reason for these differences in wages is the representation of men and women in different areas of employment. The statistics show significant horizontal occupational gender segregation, with women being concentrated in hotel and restaurant services, education, health care and social services, and men in transport and communications, construction and production, and the distribution of electricity, gas and water. The Committee notes from the Government’s report on the implementation of the European Social Charter that the average gender wage gap by economic sector varies from 46 per cent in leisure activities, culture and sports to 11 per cent in education. The wages of women were lower than the wages of men in all sectors and all occupational categories (managers, specialists, other “white-collar” workers and “blue-collar” workers); they ranged from 57 per cent of men’s wages among average-skilled workers up to 84 per cent among unskilled workers. In this report, the Government also indicates that part of the difference in wages between men and women is explained by the payment of compensation to men for work in harmful, dangerous and difficult working conditions where it is prohibited to employ women, and for overtime, work on weekends and public holidays, which is prohibited for “certain categories of women” (RAP/RCha/RUS/3(2014), 20 December 2013, pages 27–30). While noting that the legal framework established by the Labour Code reflects the principle of equal remuneration for men and women for work of equal value, the Committee notes that in light of the persistent gender wage gap and the legislative restrictions referred to above, the principle is not applied effectively in practice. *The Committee asks the Government to take concrete steps to address horizontal and vertical occupational gender segregation and inequalities in remuneration existing in practice between men and women, including specific measures to address the legal and practical barriers to the employment of women and stereotypical attitudes and prejudices with a view to reducing inequalities in remuneration, and to indicate how the social partners cooperate in this regard. The Government is also requested to provide information on the following points:*

- (i) the measures taken to promote the development and use of objective job evaluation methods in both the private and the public sectors;*
- (ii) the work and outcome of the Special Task Force on gender equality set up in 2010 in relation to equal remuneration; and*
- (iii) statistical information, disaggregated by sex and economic sector, showing the evolution of the participation of men and women in the labour market and their corresponding earnings.*

*Enforcement.* The Committee once again notes the absence of information concerning the enforcement of the legal provisions relating to equal remuneration, as well as on cases dealt with by the competent administrative and judicial authorities. The Committee is concerned that this may be due to the lack of awareness of or access to the respective rights and procedures, and to the remedies provided for under the law, or to fear of reprisals. *The Committee once again asks the Government to take appropriate measures to raise public awareness of the relevant legislation, and of the procedures and remedies available in*

*relation to equal remuneration for men and women for work of equal value. Please provide information on equal pay cases dealt with by the competent administrative and judicial authorities.*

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

## Rwanda

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Articles 1(b) and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee recalls that the definition of the expression "work of equal value" which appears in section 1.9 of Law regulating Labour No. 13/2009 of 27 May 2009 refers only to "similar work" and is therefore too narrow to fully implement the principle of the Convention. It also recalls that this law does not contain any substantial provisions prescribing equal remuneration for men and women for work of equal value and the Constitution only refers to "the right to equal wage for equal work". The Committee notes that the Government continues to repeat that, in practice, there is no discrimination between men and women with regard to remuneration, and that full legislative expression will be given to the principle of equal remuneration for men and women for work of equal value in the ongoing revision process of Law No. 13/2009. The Government also indicates that the revision will also address the linguistic differences between the Kinyarwanda and English versions of section 12. The Committee once again refers to paragraphs 672–679 of its General Survey of 2012 on the fundamental Conventions explaining the meaning of the concept of "work of equal value" which not only covers "equal", the "same" or "similar" work but also addresses situations where men and women perform different work that is nevertheless of equal value. **Noting that no progress has been made in this respect for a number of years, the Committee urges the Government to take the necessary steps without delay to amend Law No. 13/2009 of 27 May 2009 regulating Labour, including sections 1.9 and 12, so as to give full legislative effect to the principle of equal remuneration for men and women for work of equal value.**

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

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2016.

*Article 1 of the Convention. Protection against discrimination. Legislation.* With regard to the scope of application of the legislation, the Committee notes the Government's reaffirmation that the prohibition of discrimination provided for in section 12 of Act No. 13/2009 of 27 May 2009 issuing labour regulations, covers all stages of employment, including recruitment. The Government indicates that the French version of this section, which prohibits discrimination "during employment", will be amended to avoid any confusion with regard to its scope of application. **The Committee once again requests the Government to take the necessary steps to align the various linguistic versions of section 12 so that they explicitly prohibit any direct or indirect discrimination in employment and occupation in accordance with Article 1(3) of the Convention, namely with regard to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.**

*Discrimination on the basis of sex. Sexual harassment.* In its previous comments, the Committee welcomed the adoption of Act No. 59/2008 of 10 September 2008 on the prevention and punishment of gender-based violence, and the inclusion in Act No. 13/2009 of provisions prohibiting "gender-based violence" in employment and direct or indirect moral harassment at work. While having noted that the combination of these legislative provisions covered the two essential elements of sexual harassment at work, as set out in its 2002 general observation, the Committee invited the Government to consider taking the necessary measures to adopt a clear and precise definition of sexual harassment in the workplace, ensuring that this definition covers both quid pro quo and hostile working environment sexual harassment. The Committee notes the Government's indication that a clearer and more precise definition of sexual harassment covering both quid pro quo and hostile working environment sexual harassment will be inserted into Act No. 13/2009 issuing labour regulations when it will be revised. **The Committee trusts that the Government will soon be in a position to report progress in the revision process of Act No. 13/2009 and the adoption of new provisions covering the two forms of sexual harassment in employment and occupation. The Committee once again requests the Government to provide information on any measures taken to prevent and eliminate sexual harassment in the workplace (educational programmes, campaigns to raise awareness of appeal mechanisms, etc.).**

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

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

## Saint Lucia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 1(a) of the Convention. Definition of remuneration.* The Committee recalls that the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, contains no definition of the term "remuneration". The Committee notes the adoption of the Labour Code (Amendment) Act No. 6 of 2011, which amends section 95 of the Labour Code of 2006 to include the definition of "total remuneration" as "all basic wages which the employee is paid or is entitled to be paid by his or her

employer in respect of labour performed or services rendered by him or her for his or her employer during that period of employment". The Committee notes that section 2 of the Labour Code, continues to exclude overtime payments, commissions, service charges, lodging, holiday pay and other allowances from the definition of wages. The Committee recalls that 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" (see General Survey on the fundamental Conventions, 2012, paragraph 686). ***The Committee asks the Government to take the necessary measures to further amend section 95 of the Labour Code in order to ensure that at least for the purposes of the application of the principle of the Convention the concept of remuneration covers not only the basic wages, but also any additional benefit or allowance arising out of the worker's employment.***

*Different wages and benefits for women and men.* The Committee notes with regret that despite the Government's previous announcement in this respect, the Labour Code (Amendment) Act No. 6 of 2011 does not repeal the existing laws and regulations establishing differential wage rates for men and women, nor does it revoke the Contract of Service Act which provides for different ages for men and women with respect to entitlement to severance pay. ***The Committee urges the Government to take measures without delay to ensure that all laws and regulations are repealed which contain differential wages for men and women, as well as the Contract of Service Act, which provides for different ages for men and women with respect to entitlement to severance pay. The Committee requests the Government to provide information on any development in this regard.***

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

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

## Saint Vincent and the Grenadines

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 1 of the Convention. Work of equal value.* The Committee notes with regret the Government's indication that there has been no progress regarding the matter of amending section 3(1) of the Equal Pay Act of 1994, which provides for "equal pay for equal work" and is therefore not in conformity with the principle of equal remuneration for men and women for work of equal value. ***The Committee requests the Government once again to take steps to amend section 3(1) of the Equal Pay Act without further delay in order to ensure that the legislation provides for equal remuneration for men and women for work of equal value, as specified in the Convention; and to provide information on any progress achieved in this regard.***

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

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

## Senegal

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)***

*Article 1 of the Convention. Work of equal value. Legislation.* Since 2007, the Committee has been emphasizing that section L.105 of the Labour Code, which provides that "where conditions of work, vocational qualifications and output are equal, wages shall be equal for all workers, irrespective ... of gender", does not give full effect to the principle of equal remuneration for men and women for work of equal value established by the Convention. In its previous comments, the Committee recalled that, in accordance with the Convention, men and women workers are entitled to equal remuneration, not only where conditions of work, vocational qualifications and output are equal, but also where these aspects are different and their work as a whole, that is, the combination of tasks performed by men and women workers is of equal value. It also noted that section L.86(7) of the Labour Code provides that collective agreements must contain "provisions concerning procedures for the application of the principle of equal pay for equal work for women and young persons". The Committee notes that, up to now, the Government has reiterated its willingness to take the necessary measures to ensure the incorporation of the principle established by the Convention into the legislation, and indicated that a draft bill concerning non-discrimination at work, amending and supplementing certain provisions of the Labour Code, had been drawn up and was in the process of being adopted. The Committee notes, however, the Government's indication in its report that the draft bill has still not been adopted, and that the adoption of such legislative provisions and the implementation of the concept of "equal value" might lead to implementation or practical difficulties as no classification of jobs or work of equal value yet exist. The Committee recalls that the concept of "work of equal value" is the cornerstone of the Convention and that legal provisions that do not give full effect to the principle established by the Convention impede the elimination of discrimination against women with regard to remuneration. In the absence of a clear legislative framework requiring equal remuneration for men and women for work of equal value, it is difficult for a country to demonstrate that this right is ensured in practice. The Committee also wishes to draw the Government's attention to the fact that, 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 (General Survey on the fundamental Conventions, 2012, paragraph 670). ***The Committee therefore once again asks the Government to take the necessary measures, without***

*delay, to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and to provide information on the progress made in amending sections L.86(7) and L.105 of the Labour Code.*

*Article 3. Objective job evaluation.* Since 2006, the Committee has been drawing the Government's attention to the need to use objective and non-discriminatory criteria, such as the required skills, effort, responsibility and working conditions, to evaluate a job and analyse the tasks involved. It also noted that a study conducted in 2009, with ILO support, found that it was necessary to establish an objective classification of jobs. The Committee notes that the Government indicates the need for the intervention of several different institutions for this purpose, each with its own priority measures to be taken, and that for this reason, measures to improve the way in which jobs are objectively evaluated have not yet been implemented. The Government also indicates in its report that it will take action in this respect, but gives no further information on the timing envisaged for this purpose, or on the measures planned to promote a job evaluation method based on objective and non-discriminatory criteria. The Committee wishes to recall that the concept of equal value necessarily implies the adoption of a method that allows for the relative value of different jobs to be measured and compared objectively, whether at the enterprise or sector level, national level, in the framework of collective bargaining or through wage-setting mechanisms. Regarding the Government's suggestion that the ILO provide its member States with a universal job classification system to facilitate their task, the Committee draws the Government's attention to the fact that it may avail itself of ILO technical assistance, if it so wishes. ***The Committee once again invites the Government to examine the measures to be taken to implement objective job evaluation methods to address the persistent gender pay gap. It encourages the Government to carry out, in cooperation with the social partners, awareness-raising activities on the concept of "work of equal value" and the importance of using objective job evaluation systems, free from gender bias (namely under-evaluation of skills considered as "natural" for women, such as dexterity and those required in caring professions, and the over-evaluation of skills traditionally considered as "masculine", such as physical force), and requests the Government to provide information on any measures taken in this regard.***

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

## South Africa

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)***

The Committee notes the observations made by the Solidarity Trade Union (South Africa) received 12 May 2017 and the Government's response received 17 August 2017.

*Articles 1 and 2 of the Convention. Discrimination based on race, colour and national extraction. Affirmative action.* The Committee notes that in its observations, the Solidarity Trade Union raises concerns about the application of the Government's affirmative action policy, including the Employment Equity Act (EEA), and the Broad-Based Black Empowerment (BBE) Act. While recognizing the need for special measures, including affirmative action, on account of the legacy of the system of apartheid, the Solidarity Trade Union emphasizes that such measures should be designed within the spirit of the Constitution and should not create new forms of racial discrimination. The Union maintains that the Government undermines the constitutional obligations of non-racialism and the right to equality through a system of racial representativity which is endorsed by the courts and which is aimed at achieving a workforce which reflects the economically active population. The Union provides examples of court decisions and draws particular attention to the decision of the Constitutional Court (Case CCT 78/15) in *Solidarity v. Department of Correctional Services*, [2016] ZACC 18 of 16 July 2016 confirming that the EEA seeks to achieve a constitutional objective that every workforce or workplace should be broadly representative of the people of South Africa. Arguing that the affirmative action programme is not of a temporary nature, the Solidarity Trade Union submits examples of employment equity plans that have been implemented by the Department of Correctional Services during the past 16 years, and calls for a "sunset clause". While supporting the constitutional objective of a civil service that is "broadly reflective" of the people of South Africa, the Solidarity Trade Union argues that other factors in furtherance of this objective should be taken into consideration, including the ability of the candidates to do the work and the specific demographics of the diverse communities.

The Committee notes that, in its reply, the Government emphasizes that article 9(2) of the Constitution makes explicit provision for affirmative action measures, and affirms that its affirmative action programme is a temporary measure until reasonable progress is made towards achieving the purpose of the EEA, i.e. the elimination of unfair discrimination and the achievement of the equitable representation of designated groups across all occupational levels in the workplace. Regarding the Solidarity Trade Union's call for a "sunset clause", the Government responds that the EEA already has an entrenched "sunset clause" against which the implementation of the Act should be measured, based on goal-oriented flexible target setting, rather than on strictly time-bound and quota oriented goals that create absolute barriers. The Committee further notes the Government's indication that with the entry into force in 2014 of the Employment Equity Amendment Act No. 47 of 2013, the need has arisen to review all provisions affected by the amendment and that a draft amended Code of Good Practice on the preparation, implementation and monitoring of the Employment Equity Plan was published on 30 September 2016. The Government indicates that, despite the comprehensive legal framework in place, the pace of change has been slow. According to the Government, there have

been a number of implementation challenges which have contributed to this situation, including, among other things, resistance by employers to embracing employment equity.

The Committee notes that the Government provides statistics from the annual report of the Employment Equity Commission (EEC) which indicate that in 2016 certain groups were still visibly under-represented in certain positions. It notes, among other things, that in 2016 the economically active population was distributed as follows: African: 78 per cent (42.8 per cent men and 35.2 per cent women); Coloured: 9.8 per cent (5.3 per cent men and 4.5 per cent women); Indian: 2.8 per cent (1.8 per cent men and 1 per cent women); and White: 9.5 per cent (5.3 per cent men and 4.2 per cent women). The EEC report also shows that White persons continue to be over-represented at the higher occupational levels, in top and senior level management (in 2016, 14.4 per cent African; 4.9 per cent Coloured; 8.9 per cent Indian; 68.5 per cent White at the top management level; and 22.1 per cent African, 7.7 per cent Coloured, 10.6 per cent Indian and 58.1 per cent White at the senior management level). In contrast, the African and Coloured groups are over-represented in the semi-skilled and unskilled professions (in 2016, 76.1 per cent of the positions in semi-skilled and 83.2 per cent in unskilled occupations were occupied by Africans, and respectively 12.3 per cent and 11.4 per cent by Coloured). Africans continue to be the most represented group in government and state-owned companies and gender gaps persist in the representation of especially Black women and persons with disabilities particularly in the middle-to-upper occupational levels.

The Committee recognizes the particularly complex reality of South Africa where racial segregation has been deeply entrenched during apartheid including in employment and occupation. The Committee has previously noted that in order to give effect to article 9(2) (affirmative action measures) of the Constitution, section 2 of the EEA places an obligation on “designated employers” to implement “affirmative action measures to redress disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the work force”. The Committee notes that the judgment of the Constitutional Court reiterates earlier case law supporting the affirmative action policy of the Government. The Committee recalls that in the context of measures to implement the national equality policy required under *Article 2* of the Convention, treating certain groups differently may be required to eliminate discrimination and to achieve substantive equality for all groups covered by the Convention (General Survey on the fundamental Conventions, 2012, paragraph 844). The Convention therefore allows for affirmative action measures which 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* of the Convention. 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 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 (see General Survey, 2012, paragraph 862). ***Taking into account the unique situation of South Africa and the particular challenges the Government faces in implementing special measures to address inequalities, the Committee asks the Government to strengthen its efforts in promoting equality of treatment and opportunities in employment and occupation of all the designated groups, irrespective of race and colour, and of the inclusion of African and Coloured workers in the labour market, and to report on the action taken in this regard. The Committee also asks the Government, in consultation with workers’ and employers’ organizations and other stakeholders, to examine the impact of its affirmative action measures on all the affected groups, especially the most disadvantaged and vulnerable among them, in the spheres of employment and occupation with a view to determining whether the measures continue to pursue the objective of equality of opportunity, remain effective, and are in line with the principle of non-discrimination.***

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

## The former Yugoslav Republic of Macedonia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1991)***

The Committee notes that the Government’s report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

*Legislative developments.* The Committee notes the adoption of the new Law on Equal Opportunities for Women and Men, 2012. In accordance with article 2, this Law aims to establish equal opportunities and equal treatment for men and women in various fields, including the economic, social and education fields and in the public and private sectors. Articles 7 and 8 provide for the adoption of temporary special measures to overcome an existing structural gender inequality, including through positive and promotional measures. ***The Committee requests the Government to provide information on the concrete measures taken for the general implementation of this Law and its impact on the achievement of gender equality in both the public and the private sectors. It also requests the Government to provide information on any special measures taken under articles 7 and 8 to achieve equality in employment and occupation and any special protective measures in favour of certain categories of persons.***

*Sexual harassment.* The Committee also notes that article 3(3) of the new Law expressly prohibits sexual harassment in the public and private sectors, and that sexual harassment is defined, in article 4(7), as being any type of unwanted behaviour of a

sexual nature creating an intimidating or hostile atmosphere. *The Committee requests the Government to confirm that the law covers both quid pro quo and hostile environment sexual harassment at work. It also requests the Government to provide information on the practical measures taken to prevent and address sexual harassment in employment and occupation. The Government is also requested to provide information on any instances of sexual harassment addressed by the competent authorities, including any relevant administrative or judicial decisions and the sanctions imposed.*

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

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

## Trinidad and Tobago

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

*Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap.* The Committee notes from the statistics provided by the Government on the average monthly income by sex and occupational group that in 2012 the gender pay gap between men and women ranged from 10 per cent (for technician and associate professionals) to 41.8 per cent (for service and shop sales workers). The statistics concerning the average monthly income by sex and industry also show a gender pay gap in favour of men (except in construction), ranging from 1.7 per cent in the transport, storage and communication industry to 50 per cent in the sugar industry in 2010. The Committee welcomes the increase of the national minimum wage as of January 2011, and recalls that women generally predominate in low-wage employment, and that a uniform national minimum wage system helps to raise the earnings of the lowest paid, which has an influence on the relationship between men and women's wages and on reducing the gender pay gap (see General Survey on the fundamental Conventions, 2012, paragraphs 682–685). *Noting that in its report, the Government commits to addressing the gender pay gap and occupational gender segregation, the Committee requests the Government to provide information on the concrete steps taken and the progress made in this regard. Please continue to provide detailed statistical data on the earnings of men and women according to occupational group and industry, as well as information on the minimum wage.*

*Equal remuneration for work of equal value. Legislation.* The Committee recalls that the Equal Opportunity Act, 2000, contains no specific provisions regarding equal remuneration for men and women for work of equal value. The Government indicates that, in giving effect to the Act, the courts would treat unequal remuneration for men and women for work of equal value as sex-based discrimination. It further indicates that the Equal Opportunity Commission (EOC) acknowledges that the concept of "work of equal value" lies at the heart of the fundamental right to equal remuneration for men and women for work of equal value and the promotion of equality. While noting the Government's indications, the Committee would like to recall that only prohibiting sex-based wage discrimination is normally not sufficient to implement effectively the principle of the Convention as it does not capture the concept of "work of equal value". *The Committee once again urges the Government to take steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value and to provide information on any progress in this regard.*

*Collective agreements.* Since 2000, the Committee has been asking the Government to provide information on the progress made in removing sex discriminatory clauses from collective agreements. The Committee notes that the report once again contains no information in this respect. The Committee notes with *regret*, however, that in the new collective agreement on wages and conditions of service for hourly, daily and weekly rates employees employed in the Port-of-Spain Corporation for 2011–13, sex-specific terminology remains in use to describe a category of workers in the schedule of wage rates which are not gender-neutral (for example, greaseman, batteryman, watchman, handyman, charwoman, female scavenger, labourer (female), labourer (male), etc.). The Committee wishes to recall that, in specifying different occupations and jobs for the purpose of fixing wage rates, gender-neutral terminology should be used to avoid stereotypes as to whether certain jobs should be carried out by a man or a woman (see General Survey, 2012, paragraph 683). *The Committee asks the Government to indicate how it is ensured that, in determining wage rates in collective agreements, the principle of equal remuneration for men and women for work of equal value is effectively taken into account by the social partners and applied, and the work performed by women is not being undervalued in comparison to that of men who are performing different work and using different skills but that is overall of equal value. The Committee also asks the Government to provide information on the progress made in removing sex discriminatory clauses from collective agreements, and to take steps, in collaboration with the employers' and workers' organizations, to promote the use of gender-neutral terminology in referring to the various jobs and occupations in the collective agreements.*

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

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

*Article 1(1)(a) of the Convention. Discrimination based on sex.* For nearly 20 years, the Committee has been expressing concern about the discriminatory nature of several provisions providing that married female officers may have their employment terminated if family obligations affect the efficient performance of their duties. In this regard, the Committee welcomes the Government's indication that Regulation 57 of the Public Service Commission Regulations was revoked in 1998 and Regulation 58 of the Statutory Authorities Service Commission Regulations was revoked in 2006. The Government also indicates that Regulation 52 of the Police Commission Regulations, which provides that the appointment of a married female police officer may be terminated on the ground that her family obligations are affecting the efficient performance of her duties, will be put before the Police Service Commission for consideration. The Committee further recalls the potentially discriminatory impact of section 14(2) of the Civil Service Regulations, which requires a female officer who marries to report the fact of her marriage to the Public Service Commission. *The Committee requests the Government to take the necessary steps to revoke Regulation 52 of the*

*Police Commission Regulations to eliminate this long-standing discriminatory provision, and to provide information on any progress made in this regard. The Committee also requests the Government to provide information on the measures taken to amend section 14(2) of the Civil Service Regulations to eliminate any potentially discriminatory impact, for example by requiring notification of name changes for both men and women.*

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

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

## Tunisia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments initially made in 2016. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* In its previous comments, the Committee noted that section 5bis of the Labour Code establishes, in general, the principle of equality between men and women and that the Government had indicated that the general regulations of the public service and the general regulations pertaining to employees in public enterprises also recognized this principle. It reminded the Government that although these provisions are important in the context of equal remuneration, they are not sufficient to give full effect to the principle of the Convention. The Committee notes that the Government's report once again refers to the abovementioned provisions of national legislation. It also notes that article 40 of the new Constitution, adopted on 26 January 2014, stipulates that "all citizens have the right to work in favourable conditions and with a fair living wage". The Committee draws the Government's attention to the fact that if the right to a fair living wage or the general prohibition on sex-based wage discrimination constitute important prerequisites for the application of the principle of the Convention, they are not sufficient as they do not capture the concept of "work of equal value" (see 2012 General Survey on the fundamental Conventions, paragraph 676). *Recalling that it considers that the full and complete recognition in law of the principle of equal remuneration between men and women for work of equal value is of utmost importance to ensure the effective application of the Convention, the Committee trusts that the Government will take measures to fully integrate the principle of the Convention in its national legislation, in collaboration with the employers' and workers' organizations, particularly within the context of legislative reforms following the adoption of the new Constitution. The Committee requests the Government to ensure that the new legal provisions cover not only equal remuneration between men and women for work of equal value or performed in the same conditions, but also for work of an entirely different nature which is nevertheless of equal value within the meaning of the Convention. It requests the Government to provide information on any progress made in this regard, as well as on the manner in which the application of the principle of the Convention is ensured in practice. It also requests the Government to provide copies of any administrative or judicial decisions issued on the matter.*

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

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments initially made in 2016. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Articles 2 and 3 of the Convention. Equality of opportunity and treatment for men and women.* For several years, the Committee has been requesting the Government to provide information on measures taken to promote real equality of opportunities between men and women in employment and occupation, particularly by combating segregation between men and women in the labour market and stereotypes concerning the capacities and aspirations of women. The Committee notes the Government's indication once again in its report that section 5bis of the 1994 Labour Code generally prohibits discrimination on the basis of sex. The Committee also notes that the new Constitution, adopted on 26 January 2014, provides that the State undertakes to protect, support and improve women's rights, and that it guarantees equal opportunity between men and women when taking on different responsibilities in all areas (article 46). While noting the Government's indication that it is continuing its efforts to more effectively integrate women into economic life, the Committee notes that, despite the fact that school attendance rates in secondary and higher education are higher for girls than for boys, and that two-thirds of higher education graduates are girls (67 per cent in 2014), women's participation in the economy remains particularly limited. The Committee notes that, according to statistics of the National Statistics Institute (INS), in the second quarter of 2016, while women represented 50.9 per cent of the working-age population, their already low rate of participation in the workforce further decreased between 2014 and 2016, falling from 28.6 per cent to 26 per cent. Women's unemployment rate is nearly twice as high as men's (23.5 per cent compared with 12.4 per cent for men). The Committee notes that the rate of unemployment is highest for women who have graduated from higher education (40.4 per cent compared with 19.4 per cent for men). With reference to its comments relating to the application of the Equal Remuneration Convention, 1951 (No. 100), the Committee notes that women are particularly concentrated in traditionally female-dominated areas of study, such as the arts, which offer few or no job prospects or lead them to occupy lower-paid jobs. The Committee also notes that only 6.5 per cent of heads of enterprises are women and that women are barely represented in positions of responsibility (30.8 per cent of senior positions). *The Committee requests the Government to provide detailed information on the nature and impact of measures taken to promote secondary and higher education for girls and boys in non-traditional areas of study which offer real job prospects, and to combat gender stereotypes and occupational gender segregation with a view to promoting women's participation in the labour market by enabling them to access a wider range of occupations, particularly occupations performed predominantly by men, and at senior and management levels. The Committee requests the Government to provide updated statistics on the situation of men and women*

*in different economic activities, in both the private and public sector, specifying the proportion of men and women in management positions.*

*Discrimination on grounds other than sex.* For many years, the Committee has been noting with regret the absence of information from the Government on measures taken to combat discrimination based on race, colour, national extraction, religion, political opinion and social origin in the context of a national policy of equality of opportunity and treatment, in accordance with the provisions of the Convention. In its previous comments, the Committee noted the adoption of the new Constitution, which, notably, provides for the equality of citizens before the law without discrimination (article 21) and provides that all citizens have the right to decent working conditions and fair pay (article 40). The Committee notes with **concern** that the Government's report still does not contain any information on measures taken or envisaged with a view to expressly prohibiting all discrimination on grounds other than sex, set out in *Article 1(1)(a)* of the Convention. It is therefore bound to recall that the purpose of the Convention is to protect all persons against discrimination in the field of employment and occupation, on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. Noting that the new Constitution does not appear to afford protection against discrimination for the country's citizens, the Committee draws the Government's attention to the fact that the Convention 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 (see 2012 General Survey on the fundamental Conventions, paragraph 733). **Given that the elimination of discrimination in employment and occupation requires the development and implementation of a national policy of equality of opportunity and treatment in multiple areas, the Committee urges the Government to provide detailed information on:**

- (i) **measures taken or envisaged, in collaboration with the workers' and employers' organizations, to expressly prohibit all discrimination on the basis of race, colour, national extraction, religion, political opinion or social origin in law and practice;**
- (ii) **awareness-raising and training activities conducted for workers and employers, and their organizations, as well as for labour inspectors and judges to ensure better knowledge and understanding of the provisions of the Convention and to thereby foster equality of opportunity and treatment in employment and occupation in practice; and**
- (iii) **the number and nature of cases of discrimination examined by labour inspectors; and to send copies of any administrative or judicial decisions issued on this matter.**

*The Committee reminds the Government in this regard that it may avail itself of the technical assistance of the International Labour Office.*

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

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

## **Bolivarian Republic of Venezuela**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1982)**

*Article 1(a) of the Convention. Definition of remuneration.* In its previous comment, the Committee noted the provisions of sections 104 and 105 of the Basic Act concerning labour and men and women workers (LOTTT), of 30 April 2012, respecting wages and social benefits not considered to be remuneration. Food benefits for men and women workers are included among the social benefits not considered to be remuneration. On that occasion, the Committee recalled that the Convention sets out a very broad definition of the term "remuneration" designed to encompass all elements that a worker may receive for his or her work, in addition to the basic wage. In its 2012 General Survey on the fundamental Conventions, paragraph 687, the Committee indicated that 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 increasingly more of the overall earnings package.

The Committee notes the information provided by the Government in its report in relation to the constitutional and legal provisions in force respecting wages and the food benefit commonly known as the *Cestaticket*. The Government also refers in its report to the increase in the minimum wage between 1992 and 2017, and in the overall average wage (including the food benefit) between 1999 and 2017. With regard to the food benefit system the Committee refers to its comments on the Protection of Wages Convention, 1949 (No. 95). **Recalling that the application of the Convention requires the examination of equality both in relation to the job and the remuneration received, the Committee once again asks the Government to adopt the necessary measures to ensure that all the additional benefits received by workers and arising out of their employment, such as those set out in section 105 of the LOTTT, including the food benefit and the benefits paid under the social security system, are considered to be remuneration so that the principle of the Convention is fully implemented, and requests the Government to provide information on any progress made in this respect.**

*Article 1(b). Equal remuneration for work of equal value. Legislation.* In its previous comment, the Committee noted that, for several years it has been referring to the need to incorporate the principle of the Convention in legislation. It had noted with regret that the Government had not taken the opportunity afforded by the adoption of the LOTTT to include the principle of equal remuneration for men and women for work of equal value. **In the absence of information indicating any developments in this respect and, as the concept of "work of equal value" is central to the fundamental right of equal remuneration for men and women for work of equal value and the promotion of equality, the Committee once again requests the Government to take the necessary measures to amend section 109 of the LOTTT in order to give full legislative expression to the principle of the Convention.**

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

## ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1971)***

The Committee notes the observations made by the Confederation of Workers of Venezuela (CTV), the National Union of Workers of Venezuela (UNETE), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received in 2015, 2016 and 2017, which, as on previous occasions, refer to allegations of discrimination on the basis of political opinion. The Committee also notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 31 August 2017. The Committee notes the Government's replies to these observations.

### ***Follow-up to the decisions of the Governing Body (complaint made under article 26 of the Constitution of the ILO)***

The Committee recalls that in its previous comments it noted that the complaint made under article 26 of the ILO Constitution by a group of Worker delegates at the International Labour Conference in 2016 alleging non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), by the Bolivarian Republic of Venezuela was declared receivable by the Governing Body at its 328th Session (October–November 2016). With reference to Convention No. 111, the allegations relate to acts of discrimination for political reasons, such as the establishment of lists of opponents, including the so-called “Tascón List”, containing the names of persons who signed a declaration of support for the 2004 referendum on whether the President should be removed from office, and more recently those who supported the declaration of support for a similar referendum in 2016 concerning the current President. They also relate to party-political and ideological bias in employment and in the working environment in the public service. In various communications, the Government opposed the receivability of the complaint and, in relation to Convention No. 111, the Government indicated that the principle of non-discrimination in all its forms is promoted in the country, as envisaged in the national legislation, and that no worker can be dismissed without a valid reason on political grounds. It also emphatically rebutted the accusation of the alleged party-political and ideological bias in employment and in the working environment in the public service. At its 329th Session (March 2017), the Governing Body decided: (a) to transmit all allegations of the complaint concerning Convention No. 87 to the Committee on Freedom of Association for examination; (b) given that all aspects of the complaint relating to Conventions Nos 95 and 111 have not been examined recently by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), to transmit these allegations to the CEACR for their full examination; and (c) that the complaint not be referred to a Commission of Inquiry and that, as a result, the procedure under article 26 of the ILO Constitution be closed.

*Article 1(1)(a) of the Convention. Discrimination on the basis of political opinion.* For many years (since 2007), the Committee has been noting alleged acts of discrimination for political reasons against employees of the central and decentralized public administration and State enterprises, and members of the armed forces, including threats, harassment, transfers, deterioration of conditions of work and mass dismissals. The Committee noted allegations of mass dismissals of those who are not members of the governing party, do not participate in demonstrations in favour of the Government or who express views against the Government, as well as persistent discrimination against workers on the “Tascón List”. The allegations refer, among other matters, to the dismissal of 124 workers from the Bicentenary Bank, 40 workers from the Niño Simón National Foundation and four workers from the Integrated National Service for the Administration of Customs and Excise (SENIAT) for supporting the popular consultation for the activation of a referendum to recall the President of the Republic. The Committee notes that, in their recent comments, the CTV, UNETE, CGT, CTASI and CODESA allege that discrimination for political reasons, far from diminishing, has grown worse. They complain of intimidation and penalties against workers who participated in or supported the popular consultation on whether to hold a referendum to determine whether the President should be removed from office in 2016. The Committee notes that these allegations, and particularly those relating to threats by high-level Government officials and leaders of the official party against persons who voted for opposition candidates in the parliamentary elections in December 2015 and in support of the recall referendum for the President of the Republic in 2016, were also contained in the complaint made under article 26 of the ILO Constitution by Worker delegates to the International Labour Conference. The Committee further notes that, in its 2017 observations, the CTASI alleges that since the events of 2002 any expression of political opposition has been stigmatized. The Committee also notes the allegations by the CTV, CGT, UNETE and CODESA that public employees and workers are subject to compulsory mobilization for demonstrations and marches in support of the Government.

The Committee notes that, in its reply to the observations made by the UNETE, CTV, CGT and CODESA, the Government indicates that employment security is recognized by the Basic Act concerning labour and men and women workers (LOTTT) and the national Constitution, although there are exceptions to the rule, specifically for executive positions. The Government adds that absolute employment security, as set out in Decree No. 2.158 of 28 December 2015, which has the force of law, has been extended for three years and recalls that workers covered by the Decree cannot be dismissed, demoted or transferred, without a valid reason and the prior approval of the competent labour inspector, in accordance with section 422 of the LOTTT. Finally, the Committee notes the Government's reiterated indication in its 2017 report that discrimination against men and women workers for political reasons is contrary to the principles set out in the national legislation and that in 2005 the then President of the Republic ordered the “Tascón List” to be set aside. The

Government refers to its previous responses and rebuts the allegations concerning the “Tascón List”, as well as the issues raised concerning the 2015 parliamentary elections. It adds that: (1) with regard to the allegations concerning the “serious situation” in the country “due to massive dismissals for political reasons”, that the allegations made are too general and do not specify whether complaints were lodged with the various official bodies which offer institutional remedies for victims of violations of individual or collective rights or crimes, or with the administrative bodies of the Ministry of the People’s Power for the Social Process of Labour in the case of the dismissal of a worker protected by employment security; (2) with reference to the allegations of the dismissal of persons who voted for the opposition, that the participation of citizens in political activities is not conditional on their status as public officials or workers in public or private enterprises, and that the people participate as protagonists, and that anyone who so wishes may therefore participate or not in the political activities that are organized; and (3) in relation to the alleged threats of penalties and dismissals for supporting the recall referendum for the President of the Republic, more details are required as the Government is not aware of complaints submitted on these matters to administrative or judicial bodies.

The Committee notes with **concern** the new allegations of discrimination in employment for political reasons. While noting the constitutional and legal provisions which, according to the Government, afford protection against discrimination in employment, the Committee recalls that legislative measures to give effect to the principles of the Convention are important, but not sufficient to achieve its objective. Moreover, the existence of legal provisions does not imply the absence of discrimination in practice. The Committee reiterates that 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. The general obligation to conform to an established ideology is therefore discriminatory (see General Survey on the fundamental Conventions, 2012, paragraphs 805, 850 and 856). ***In these circumstances, the Committee once again asks the Government to take the necessary steps without delay to ensure full respect and compliance with the Convention and to ensure that public and private sector workers are not subject to discrimination on the basis of political opinion. Taking into account the high number of allegations and that, according to the Government, the allegations are too general, the Committee also urges the Government to take all the necessary steps without delay to establish a working group including all the trade union organizations concerned to examine and to deal with all the complaints, which will also consider the development of a system to prevent discrimination and the establishment of mechanisms and institutions to address in an independent manner complaints of discrimination in employment and occupation on the basis of all the grounds of the Convention, and in particular, political opinion, in addition to providing effective remedies. The Committee reminds the Government of the availability of ILO technical assistance.***

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

## Viet Nam

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)***

The Committee notes that the Government’s report has not been received. It is therefore bound to repeat its previous comments initially made in 2015. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

***Articles 1 and 2 of the Convention. Legislative developments. Definition of remuneration and work of equal value.*** The Committee notes that the new Labour Code (Law No. 10/2012/QH13 of 18 June 2012) includes the principle of equal payment of wages without discrimination based on gender for employees performing work of equal value (section 90(3)) and provides for a definition of wages that includes “remuneration” based on the work or position, “wage allowances” and “other additional payments” (section 90(1)), but is silent about payment in kind. The Committee points out that *Article 1(a)* of the Convention sets out a very broad definition of “remuneration” which includes not only “the ordinary, basic or minimum wage or salary” but also “additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers’ employment”. ***The Committee requests the Government to indicate whether payment in kind would be covered by section 9(3) of the new Labour Code and to provide information on its implementation and enforcement. The Committee further requests the Government to provide information on any measures taken or envisaged to raise awareness of these provisions among workers, employers, their respective organizations and enforcement public officials, as well as any administrative or judicial cases in this respect.***

***Assessing and addressing the gender wage gap.*** The Committee notes the results of the labour force survey (second quarter of 2014) published by the General Statistics Office of Vietnam, according to which the overall gender wage gap in average monthly earnings of workers is 9.3 per cent. The Committee notes the detailed information provided by the Government with respect to measures taken to implement the National Strategy on Gender Equality (2011–20), through the strengthening of capacity building; the drafting, implementation and monitoring of gender equality legislation, awareness-raising activities; and the development of a gender database and advisory and support services. ***While noting these important developments with respect to the promotion and implementation of gender equality, the Committee requests the Government to indicate how these measures have an impact on reducing the persistent gender wage gap and to provide specific information on any measures taken or envisaged to address underlying causes. The Committee once again requests the Government to collect and provide more specific statistical data, disaggregated by sex, on the distribution of men and women in different sectors of economic activity, occupational categories and positions and their corresponding earnings both in the private and public sectors.***

***Enforcement.*** The Committee notes from the Government’s report that the Ministry has conducted many training courses on labour laws, including on equal remuneration for work of equal value, for labour inspectors and others officials. It further notes that there has not been any administrative and judicial case concerning equal remuneration for men and women. Regarding

the latter point, the Committee recalls that where no cases or complaints, or very few, are being lodged, this is likely to indicate a lack of an appropriate legal framework, a lack of awareness of rights, lack of confidence in, or absence of, practical access to procedures, or fear of reprisals (see General Survey on the fundamental Conventions, 2012, paragraph 870). ***The Committee asks the Government to continue to provide information on the training offered to judges, inspectors and other labour officials, as well as awareness-raising measures provided to social partners. It further requests the Government to provide information on any violations of the principle of the Convention detected by, or brought to the attention of, the labour inspectorate services, the sanctions imposed and the remedies provided.***

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

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

***Legislative developments.*** The Committee notes that section 8(1) of the newly amended Labour Code (Law No. 10/2012/QH13 of 18 June 2012) extends the number of prohibited grounds of discrimination. Specifically, regarding the grounds enumerated in *Article 1(1)(a) of the Convention*, the new Labour Code adds "colour" to the previously prohibited grounds of gender, race, social class, belief or religion.

Regarding the grounds enumerated in *Article 1(1)(b) of the Convention*, the Committee welcomes the addition in the new Labour Code of "marital status," "HIV status," "disabilities", and "establishing, joining a trade union or participating in trade union activities". ***The Committee requests the Government to provide information on the implementation and enforcement of the expanded grounds of discrimination set out in section 8(1) of the amended Labour Code, including any measures taken or envisaged to raise awareness of these provisions among workers, employers and their respective organizations, as well as public enforcement officials, and any administrative or judicial complaints submitted to the relevant authorities in this respect, disaggregated by the type of alleged discrimination.***

***Article 1 of the Convention. Discrimination based on colour and national extraction.*** The Committee recalls its previous request to the Government to take practical measures to ensure the application of the Convention with respect to equality of opportunity and treatment irrespective of political opinion, national extraction and colour. In this respect, the Committee notes that, although section 8(1) of the Labour Code of 2012 now includes colour as a prohibited ground of discrimination, it continues to omit "political opinion" and "national extraction". In this regard, while the Committee notes the Government's indication that Decree No. 95/2013/ND-CP of 22 August 2013 establishes penalties for administrative violations on the grounds of discrimination, as defined in section 8(1) of the Labour Code, it emphasises that this Decree does not apply to the grounds of political opinion and national extraction. ***The Committee requests the Government to provide information on the application of Decree No. 95/2013/ND-CP of 2013 with regard to acts of discrimination on the basis of colour, as well as any other measures taken to ensure equality of opportunity and treatment irrespective of colour. The Committee also once again requests the Government to provide information on any practical measures taken to ensure the full application of the Convention in relation to equality of opportunity and treatment irrespective of political opinion and national extraction.***

***Discrimination based on religion.*** The Committee recalls its previous request to the Government to provide details of legislative measures that prohibit discrimination in employment and occupation on religious grounds. The Committee notes the Government's indication that article 24 of the Constitution and section 8(1) of the Labour Code of 2012 include religion as a prohibited ground of discrimination. The Government adds that Decree No. 95/2013/ND-CP of 22 August 2013 imposes fines for acts of discrimination on grounds of religion, and that Decree No. 92/2012/ND-CP of 8 November 2012 provides details regarding the implementation of Ordinance No. 21/2004/PL-UBTVQH11 of 29 June 2004, which prohibits discrimination on religious grounds. However, the Committee notes that section 6(1)(a) of Decree No. 92/2012/ND-CP provides that, in order to obtain registration, the activities of a religious organization must not be in violation of sections 8(2) and 15 of Ordinance No. 21/2004/PL-UBTVQH11. Section 8(2) of the Ordinance prohibits the abuse of the right to belief and religious freedom in contravention of national laws and policies while section 15 provides that religious activities shall be ceased if they adversely affect the unity of the people or national cultural traditions. In this regard, the Committee recalls Directive No. 01/2005/CT-TTg concerning protestantism, adopted by the Prime Minister on 4 February 2005, prohibits attempts to force people to follow or to abandon a religion. The Committee notes that taken together the three laws allow for scenarios in which a worker, with a religious belief not recognized by the Government, may face discrimination by the employer in employment and occupation. In this regard, the Committee recalls that the Convention protects the expression and manifestation of religion, and that appropriate measures need to be adopted to eliminate all forms of intolerance (see General Survey on the fundamental Conventions, 2012, paragraph 798). ***The Committee requests the Government to provide information on the application in practice of Ordinance No. 21/2004/PL-UBTVQH11, Directive No. 01/2005/CT-TTg and Decree No. 2/2012/ND-CP, including information on the measures taken or envisaged to ensure that workers or employers with unrecognized religious views are not subject to discrimination in employment or occupation.***

***Discrimination based on social origin.*** The Committee notes that the Labour Code includes "social class" as a ground of discrimination that may have a narrower meaning than the ground of "social origin" contained in *Article 1(1)(a) of the Convention*. In this regard, the Committee recalls that discrimination and lack of equal opportunities based on "social origin" refer 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 (see General Survey on the fundamental Conventions, 2012, paragraph 802). ***The Committee requests the Government to clarify how it interprets the term "social class", and whether in its view this term is consistent with the term "social origin" as provided for in the Convention.***

***Article 3 of the Convention. Sexual harassment.*** The Committee notes that section 8(2) of the Labour Code of 2012 prohibits sexual harassment at the workplace. Section 37 of the Labour Code provides for the right of an employee to unilaterally terminate a contract on the grounds of sexual harassment, and sections 182 and 183 specifically prohibit sexual harassment against domestic workers. However, the Committee also notes that the amended Labour Code still does not provide a definition

of sexual harassment. In this regard, the Committee notes that a Code of Conduct on Sexual Harassment in the Workplace was developed in May 2015 by the tripartite Industrial Relations Committee with the support of the ILO, which defines both quid pro quo and hostile environment sexual harassment, as well as the term “workplace”. The Committee also notes that the Code of Conduct applies to all companies in both the public and private sectors, regardless of size, and aims to help employers and workers develop their own sexual harassment policies or regulations. The Committee notes the Government’s indication that Decree No. 04/2005/ND-CP of 11 January 2005 provides guidance on the enforcement provisions for sexual harassment contained in the previous Labour Code and defines the rights and obligations of the complainant and the person being complained against, the jurisdiction, procedures and enforcement of appeal decisions. It notes, however, that an equivalent Decree providing equivalent interpretation for the revised Labour Code has not been submitted by the Government. ***The Committee requests the Government to provide information on the implementation and enforcement of sections 8(2), 37, 182 and 183 of the Labour Code of 2012, including any measures taken or envisaged to raise awareness of these provisions among workers, employers and their respective organizations, as well as public enforcement officials, along with any administrative or judicial complaints submitted to the relevant authorities in this respect. It also requests the Government to provide specific information on the measures taken or envisaged to facilitate the application of the Code of Conduct on Sexual Harassment in the Workplace by workers and employers in both the public and private sectors, as well as information on any progress made in this regard.***

***Restrictions on women’s employment.*** The Committee recalls its request to the Government to take steps to ensure that protective measures restricting women’s employment are limited to maternity protection. The Committee notes the provisions cited by the Government regarding maternity protection, but also notes section 160 of the Labour Code of 2012, which prohibits the employment of female workers on work that is harmful to parenting functions, as specified in the list of types work issued by the Ministry of Labour, Invalids and Social Affairs (MLISA), that is work that requires regular immersion in water and regular underground work in mines. It notes the Government’s indication that the MLISA issued Circular No. 26/2013/TT-BLDTBXH on 18 October 2013 which lists 77 job categories in which women are prohibited from working. In this regard, the Committee reiterates that protective measures for women should not go beyond maternity protection, as those aimed at protecting women generally because of their sex or gender are often based on stereotypical perceptions of their suitability, capabilities and appropriate role in society and are contrary to the Convention, and thus constitute obstacles to the recruitment and employment of women. The Committee wishes to point out once again that provisions relating to the protection of persons working in harmful or dangerous jobs should be aimed at protecting the health and safety of both women and men at work. ***The Committee requests the Government to provide information on the application of section 160 of the Labour Code of 2012, including a list of occupations prohibited under section 160(2) and (3), in addition to the occupations designated in Circular No. 26/2013/TT-BLDTBXH of 2013. The Committee once again requests the Government to take measures to ensure that future revisions of the above Circular limit its restrictions to women who are pregnant or breastfeeding.***

***Articles 3 and 5. Prohibition of discriminatory recruitment practices based on sex, and special measures.*** The Committee recalls its request to the Government on the measures taken to curb discriminatory practices affecting women in recruitment, such as giving preference to male job applicants and discouraging female applicants by establishing requirements prohibiting marriage and pregnancy during a certain period following recruitment. In this regard, the Committee notes sections 8(1), 153 and 154 of the Labour Code of 2012, which prohibit discrimination based on gender and require the Government and employers to create employment opportunities for woman employees and to promote gender equality in recruitment. It also notes Decree No. 85/2015/ND-CP of 1 October 2015, which contains detailed provisions for the implementation of these sections, as well as specific provisions to improve the working conditions and health-care services available to women employees. The Committee especially welcomes the specific measures outlined in section 5(1)(b) of the Decree, which provides that the State shall ensure equal rights for men and women employees in recruitment through preferential treatment and tax reduction schemes. Section 5(2)(a) provides that the State shall encourage employers to “prioritize females in recruitment and assignment if the job is suitable for both males and females and the applicant is qualified”. The Committee also notes the Government’s indication that section 25(2) of Decree No. 95/2013/ND-CP of 22 August 2013 establishes a fine of between 5,000,000 and 10,000,000 Vietnamese Dong (VND) for acts of discrimination against, inter alia, gender and marital status, and that section 18 of the Decree specifies sanctions for the violation of provisions regarding women workers. ***The Committee requests the Government to provide information on the implementation and enforcement of sections 8(1), 153 and 154 of the Labour Code of 2012, as supplemented by Decree No. 85/2015/ND-CP of 2015, including any measures taken or envisaged to raise awareness of these provisions among workers, employers and their respective organizations, as well as public enforcement officials. The Committee also requests the Government to provide detailed statistical information on the application of sections 18 and 25(2) of Decree No. 95/2013/ND-CP of 2013, and any administrative or judicial complaints submitted to the relevant authorities in this respect.***

***Article 4. Measures affecting individuals who are justifiably suspected of, or engaged in, activities prejudicial to the security of the state.*** The Committee recalls its previous comments in which it noted that persons upon whom a ban under section 36 of the Penal Code has been imposed have the right to appeal the decision within 15 days of the date of conviction, and that the courts had issued various rulings banning persons from holding certain posts, practising certain occupations or doing certain jobs. The Committee recalls the Government’s previous indication that in practice bans can be imposed when a court judges that the continuation of the work by the convicted person may cause a danger for society, and that this could be the case in about 100 acts criminalized by the Penal Code, such as acts infringing the life, health or dignity of a person, acts infringing the freedom of citizens, drug-related crimes, acts infringing public order and security or acts interfering with justice. The Committee notes the Government’s brief reply referring the Committee to aggregated statistics on the numbers of court cases dealing with different types of labour disputes. The Committee notes, however, that this information does not reply to its previous request. ***The Committee therefore repeats its earlier request to the Government to provide information related to the rulings banning persons from holding certain posts, practising certain occupations or doing certain jobs; the offences in connection with which such bans have been imposed; and the number and nature of the appeals lodged and their outcomes.***

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

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

## Yemen

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1969)***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 3(a) of the Convention. Legislation.* The Committee recalls that article 5 of the Labour Code provides for the right and the duty to work without discrimination on the grounds of sex, age, race, colour, creed or language. It further recalls that it has been stressing for many years the importance of declaring and pursuing a national equality policy covering all the grounds enumerated in the Convention. The Committee notes that the Government is currently revising the Labour Code. ***The Committee accordingly requests the Government to take the opportunity of the current revision of the Labour Code to explicitly prohibit direct and indirect discrimination based on at least all of the grounds of the Convention, including political opinion, social origin and national extraction, with respect to all aspects of employment and occupation and all workers.***

*Article 2. National equality policy.* The Committee recalls that, with a view to achieving the elimination of discrimination in employment and occupation, States are required to develop and implement a multifaceted national equality policy. The implementation of the 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 (see General Survey on the fundamental Conventions, 2012, paragraph 732). ***The Committee asks the Government to take steps to develop and implement a national equality policy to address discrimination and promote equality in the public and private sectors, at least with respect to race, colour, sex, religion, political opinion, national extraction and social origin. The Government is asked to provide information on any measures taken in this respect.***

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

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 100** (Algeria, Barbados, Belgium, Belize, Botswana, Brazil, Burundi, Canada, Central African Republic, Congo, Djibouti, Dominica, Eritrea, Ethiopia, France, Gabon, Gambia, Georgia, Grenada, Guinea-Bissau, Haiti, Hungary, Iceland, India, Islamic Republic of Iran, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Republic of Korea, Kyrgyzstan, Latvia, Lebanon, Lesotho, Luxembourg, Malaysia, Mali, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, New Zealand: Tokelau, Niger, Nigeria, Norway, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Senegal, Singapore, Slovenia, Solomon Islands, South Sudan, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Uganda, Vanuatu, Bolivarian Republic of Venezuela, Viet Nam, Yemen); **Convention No. 111** (Algeria, Australia, Bahrain, Barbados, Belgium, Belize, Brazil, Burundi, Canada, Central African Republic, Congo, Djibouti, Dominica, Eritrea, Ethiopia, France, Gabon, Gambia, Georgia, Grenada, Guinea-Bissau, Haiti, Hungary, Iceland, India, Italy, Jamaica, Kenya, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lesotho, Liberia, Luxembourg, Mali, Mongolia, Montenegro, Netherlands, New Zealand, New Zealand: Tokelau, Niger, Norway, Pakistan, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Slovenia, Solomon Islands, South Africa, South Sudan, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Uganda, Vanuatu, Bolivarian Republic of Venezuela, Viet Nam, Yemen); **Convention No. 156** (Albania, Azerbaijan, Belize, Bosnia and Herzegovina, Croatia, Ethiopia, Iceland, Japan, Montenegro, Netherlands, Niger, Norway, San Marino, Serbia, The former Yugoslav Republic of Macedonia, Yemen).

## Tripartite consultation

### Antigua and Barbuda

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2002)**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

*Article 5 of the Convention. Effective tripartite consultations.* The Committee notes that the Government's report does not contain information on the tripartite consultations held on matters related to the Convention. **The Committee once again requests the Government to provide detailed information on the activities of the National Labour Board on matters regarding international labour standards covered by the Convention. It also once again requests the Government to include detailed and updated information on the tripartite consultations held concerning each of the matters related to international labour standards covered by Article 5(1) of the Convention.**

*Article 5(1)(b). Submission to Parliament.* The Government indicates in its report that all instruments adopted by the Conference were submitted to the relevant authority for action. **The Committee refers to its observations on the obligation to submit and once again requests the Government to report on the effective consultations held with respect to proposals made to the Parliament of Antigua and Barbuda in connection with the submission of the instruments adopted by the Conference, including indications of the date on which the instruments were submitted to Parliament.**

*Article 5(1)(c). Examination of unratified Conventions and Recommendations.* The Government reiterates, as it did in 2014, that it notes the comments made by the Committee with regard to the examination of unratified Conventions. **The Committee refers to its previous comments and urges the Government to provide updated information on the re-examination of unratified Conventions with its social partners, in particular: (i) the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which is deemed a governance Convention; (ii) the Holidays with Pay Convention (Revised), 1970 (No. 132), (which revises the Weekly Rest (Industry) Convention, 1921 (No. 14)), and the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), to which Antigua and Barbuda is a State party; and (iii) the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), (which revises the Seafarers' Identity Documents Convention, 1958 (No. 108)), that has also been ratified by Antigua and Barbuda.**

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

### Bangladesh

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)**

*Article 5(1). Effective tripartite consultations.* In its previous comments, the Committee invited the Government to take advantage of the tripartite consultation procedures required under the Convention in order to move forward with ratification and application of the ILO instruments relevant to the occupational safety and health (OSH) framework, in accordance with the Tripartite Statement of Commitment adopted in 2013 after the tragic events of Rana Plaza and the Tazreen Factory. It also invited the Government to re-examine certain other unratified Conventions in consultation with the social partners, specifically the Minimum Age Convention, 1973 (No. 138), a fundamental Convention; the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Employment Policy Convention, 1964 (No. 122), both of which are governance Conventions; the Indigenous and Tribal Peoples Convention, 1989 (No. 169), whose ratification would result in the immediate denunciation of the Indigenous and Tribal Populations Convention, 1957 (No. 107); the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185); and the Maritime Labour Convention, 2006 (MLC, 2006). The latter two instruments, were both ratified in 2014 by Bangladesh. The Government indicates that ratification of the Conventions mentioned by the Committee is not feasible in the near future, as it would take considerable time to create the necessary administrative and legal systems prior to ratifying these instruments. The Government adds that, while it has not ratified the OSH instruments, it is nevertheless committed to ensure enforcement of existing legislation related to OSH and work-related injuries. The Committee notes that the Government does not provide information on the consultations held by the Tripartite Consultative Council on the other matters covered under *Article 5(1)* of the Convention. **The Committee therefore urges the Government to provide specific and detailed information on the content and outcome of the tripartite consultations held on all matters concerning international labour standards covered by the Convention, particularly relating to the questionnaires on Conference agenda items (Article 5(1)(a)); the submission of instruments adopted by the Conference to Parliament (Article 5(1)(b)); the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)); and reports to be presented on the application of ratified Conventions (Article 5(1)(d)).**

## Burundi

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* The Government indicates in its report that it collaborates closely with the social partners, including the Trade Union Confederation of Burundi (COSYBU) and the Confederation of Free Trade Unions of Burundi (CSB). The Government reports the adoption on 25 May 2011 of a National Social Dialogue Charter, in the context of which each party has undertaken to promote social dialogue and give priority to tripartite consultations with a view to resolving disputes related to the world of work. The Government also reports the establishment of the National Social Dialogue Committee (CNDS), under Decree No. 100/132 of 21 May 2013 revising Decree No. 100/47 of 9 February 2012 on the establishment, composition and operation of the CNDS. The Government also indicates that eight provincial social dialogue committees (CPDS) were established between 2015 and 2016 in the provinces of Makamba, Muyinga, Ruyigi, Karusi, Rumonge, Bubanza, Ngozi and Gitega. At the branch level, six joint bipartite social dialogue committees have been established (for health, justice, education, transport, agriculture and telecommunications). The Government adds that tripartite consultations are held when necessary.

The Committee notes the information provided by the Government concerning the resolution by the CNDS of nine labour disputes, and the recent organization of training on international labour standards, carried out with the technical support of the ILO specialist from the Pretoria Office. However, the Committee recalls that the Convention mainly covers tripartite consultations intended to promote the implementation of international labour standards. It notes in this respect that the Government's report does not contain any information on the tripartite consultations held regarding the matters covered by *Article 5(1)* of the Convention. With regard to the frequency of the consultations held, under the terms of *Article 5(2)* of the Convention, it should also be recalled that, although this provision requires consultations to be held at least once a year, it does not require them to cover each year all of the matters set out in *Article 5(1)*. In practice, certain subjects (such as replies to questionnaires, proposals relating to the submission of instruments to the competent authorities and reports to be made to the ILO) imply annual consultations, while others (such as the re-examination of unratified Conventions and of Recommendations, as well as proposals for the denunciation of ratified Conventions) require less frequent examination. ***The Committee therefore requests the Government to provide the ILO with a copy of the legislative, administrative or other provisions giving effect to the Convention, and particularly those governing the composition and operation of the CNDS and the CPDS. It also requests the Government to provide detailed information on the content and outcome of the consultations held each year on the matters relating to international labour standards set out in Article 5(1) of the Convention.***

*Article 4. Administrative support.* The Committee understands that a permanent executive secretariat for the CNDS has been established, in accordance with Ministerial Ordinance No. 570/66 of 3 January 2014 on the appointment of certain members of the staff of the permanent executive secretariat of the CNDS, and that an operational budget has been allocated to it. ***The Committee requests the Government to describe the manner in which administrative support is provided for the consultation procedures envisaged by the Convention and to specify whether arrangements have been made or are envisaged, in accordance with Article 4(2), for the financing of any necessary training of participants in the consultation procedures.***

## Chad

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)**

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

*Technical assistance.* In its conclusions of June 2013, the Conference Committee invited the Government to take all appropriate measures to ensure the effective operation of the procedures required by this governance Convention. The Government states in its report, received in November 2014, that it always advocates social dialogue with the social partners. The Committee notes that the Government submitted reports on ratified Conventions to the social partners for any possible observations, as agreed at a workshop held in Dakar in July 2014 on constitutional obligations. The Committee was also informed about a capacity-building workshop on international labour standards and social dialogue, which was held in Ndjamena in September 2014. With ILO assistance, and in the framework of the follow-up requested by the Conference Committee pursuant to a tripartite discussion held in June 2013, the participants put forward various proposals to strengthen the consultation procedures required by the Convention, including the convening of a tripartite workshop with the departments and units to address the information required in the Committee of Expert's comments, and a tripartite workshop for the validation of reports before they are submitted to the ILO. ***The Committee invites the Government to submit further information on the progress made as a result of the assistance received from the ILO on matters related to tripartite consultations and social dialogue.***

*Articles 2 and 5 of the Convention. Consultation mechanisms and effective tripartite consultations.* The Government states that in 2013, the Higher Committee for Labour and Social Security convened with a view to incorporating the technical comments in the draft Labour Code. The Committee also notes that this Higher Committee was inactive in 2014. ***The Committee invites the Government to provide detailed information on the consultations held on all the items covered by Article 5(1) of the Convention.***

*Article 4(2). Training.* The Government confirms that training for participants in consultative procedures is necessary, but that more often than not there is a problem of funding. The Committee notes the possibility of the Government intervening directly or through third-party development partners to make training possible. ***The Committee invites the Government to describe any arrangements made for the financing of any necessary training of participants on the consultative procedures.***

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

## China

### Hong Kong Special Administrative Region

#### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (notification: 1997)***

*Articles 2(1) and 3(1) of the Convention. Effective tripartite consultations. Election of representatives of the social partners.* The Committee has been requesting for some years that the Government and the social partners promote and strengthen tripartism and social dialogue in order to facilitate the operation of the procedures ensuring effective tripartite consultations, including ensuring the meaningful participation of the Hong Kong Confederation of Trade Unions (HKCTU) in the consultation process. In its previous comments, the Committee noted the observations of the HKCTU, which once again expressed its concern regarding ineffective consultation in relation to the current electoral system for representation on the Labour Advisory Board (LAB), the designated tripartite body for tripartite consultations for purposes of the Convention. The HKCTU noted that the LAB has six workers' representatives, five of whom are elected by registered trade unions, with a sixth representative appointed *ad personam* by the Government. It pointed out that union votes are counted with equal weight regardless of size of membership according to the principle of "one union, one vote". The electoral system allows voters to vote for a slate of five candidates in one ballot, hence the securing of more than half of the votes would allow a slate of five candidates to win all five seats. In its observations, the HKCTU maintained that this electoral system is unjust and has prevented it from being elected to the LAB, despite its status as the second largest trade union confederation. The Committee requested the Government to provide information on all measures taken or envisaged to ensure the HKCTU's meaningful participation as part of the consultative process within the most representative organization of workers, and requested the Government to report on the results thereof.

In its response, the Government indicates that it fully recognizes the importance of tripartite consultations and social dialogue with the participation of organizations of employers and workers. With reference to the Committee's previous comments, the Government adds that it fully understands that the term "most representative organizations of employers and workers", within the meaning of *Article 1* of the Convention, does not mean only the largest organization of employers and the largest organization of workers, and that representative organizations, as referred to in the Convention, are the most representative organizations of employers and workers that enjoy the right of freedom of association and are free to choose their representatives in the tripartite consultations.

Moreover, the Committee notes the Government's indication that all registered trade unions, regardless of their affiliations with any trade union group, are invited to participate in the election of workers' representatives to the LAB by nominating candidates to stand for election and freely electing representatives to the LAB by secret ballot. More specifically, each registered trade union is free to vote for one or more candidates, up to the maximum number of workers' representatives eligible for election to the LAB, enabling the expression of preferences for the choices of workers' representatives to the fullest extent. The Government adds that more than half of the registered trade unions in the Hong Kong Special Administrative Region (HKSAR) are not affiliated to any major trade union group, and none of the trade union groups has any dominating number of affiliates. As all registered trade unions are eligible to exercise their free choice in these elections, the Government considers that there is no question of any particular trade union group being excluded from the election. The Government adds that there is no evidence suggesting any unfairness in the current election method, noting that the method of returning workers' representatives to the LAB through an election by all registered trade unions is well established in the HKSAR. The method is transparent, well tested and widely accepted by the labour sector as best representing the views of workers and most suitable to local conditions. The Government undertakes to continue to ensure that each and every registered trade union, including those affiliated to the HKCTU, enjoys the same right to nominate candidates and to vote in the election of workers' representatives of the LAB. Nevertheless, the Government considers that it would be improper and inappropriate if the system of electing workers' representatives to the LAB were to be changed for the advantage of a particular organization.

The Government indicates that it will continue to observe tripartite consultations set out in the Convention and take into account the views of employers and workers in formulating labour policies. During the tripartite consultative process, representatives of employers and workers participate equally in various committees under the auspices of the LAB, including members from different trade union groups, including the HKCTU. All trade unions and trade union groups, including the HKCTU and its affiliated trade unions, are also free to communicate their views to the HKSAR Government. The Government further indicates that the principle of tripartite consultations is also applied in addressing other labour matters, such as the Minimum Wage Commission (MWC). The Committee recalls its previous comments, in which it expressed concern that, under the process of voting for a slate of labour organization candidates, as described by

the HKCTU, there is a risk that the second largest trade union confederation in the country may have been excluded from meaningful participation within the most representative organization of workers. ***The Committee therefore urges the Government to make every effort, together with the social partners, to ensure the promotion of tripartism and social dialogue in order to facilitate the procedures ensuring effective tripartite consultations. The Committee also once again requests the Government to communicate information on all measures taken or envisaged to ensure the HKCTU's meaningful participation in the consultative process within the most representative organization of workers.***

*Article 5(1). Effective tripartite consultations.* The Government indicates that, during the reporting period, the LAB's Committee on the Implementation of International Labour Standards (CIILS) was consulted on all reports to be submitted under article 22 of the ILO Constitution. The procedures for preparing these reports and copies of the reports were communicated to all LAB members. Members of the CIILS were also informed of the progress of the legislative amendment exercise for the application of the Maritime Labour Convention, 2006 (MLC, 2006), in the Hong Kong Special Administrative Region, and members shared their views freely in the meeting. The Committee notes the report of the LAB for 2015–16, communicated with the Government's report. ***The Committee requests the Government to continue to provide up-to-date information on the content and outcome of the consultations held on all matters concerning international labour standards covered by the Convention (Article 5(1)(a)–(e)).***

## Costa Rica

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)***

The Committee notes the observations of the Confederation of Workers Rerum Novarum (CTRN), which were received on 5 September 2016, and the Government's reply, which was received on 6 January 2017.

*Article 1 of the Convention. Representative organizations.* The Committee notes the observations of the CTRN, in which the confederation maintains that the most representative workers' organizations, namely the trade union confederations (third-level umbrella organizations representing blue-collar and white-collar workers from various sectors) are not represented in the Higher Labour Council. ***The Committee requests the Government to provide information on the measure taken, particularly in relation to the selection criteria, to ensure that the consultations required by the Convention are held with the "most representative organizations of employers and workers", indicating the criteria used for determining representativeness.***

*Article 5(1). Effective tripartite consultations.* In reply to the Committee's previous comments, the Government indicates in its report that whenever it has received documents from the ILO it has fulfilled the requirements of *Article 5(1)* of the Convention. Accordingly, the Government refers, inter alia, to the sending of draft and final reports on the application of ratified Conventions and on unratified Conventions, and also of various ILO questionnaires, to the CTRN and other representative organizations between August 2013 and May 2016. The CTRN, for its part, reiterates its concern at the fact that the Government continues to send reports on the application of ratified Conventions very late and only after it has sent them to the Office, or giving very short notice (on some occasions, only ten days) for the social partners to make any observations that they consider appropriate. The Committee recalls that, in order to be "effective", consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. The important factor here is that the persons consulted should be able to put forward their opinions before the government takes its final decision. The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions. Moreover, the Committee recalls that the consultations have to be held during the process of preparing the reports. Where written consultations are held, the government should transmit to the representative organizations a draft report in order to gather their opinions in advance, before preparing its definitive report (see General Survey of 2000 on tripartite consultation, paragraphs 31 and 93). As regards the invitation made by the Committee in its observations of 2012 and 2013, the Government indicates that the Ministry of Labour and Social Security held consultations with the social partners in order to consider the possibility of establishing a schedule for the preparation of reports. ***In view of the observations of the CTRN, the Committee requests the Government to provide its comments in this respect. The Committee also requests the Government to continue sending information on consultations held on each of the matters related to international labour standards covered by Article 5(1) of the Convention. The Committee further requests the Government to send information on consultations held with the social partners on how implementation of the procedures required by the Convention might be improved, including establishing a schedule for the preparation of reports (Article 5(1)(d)). Moreover, regarding the procedures required by the Convention, the Committee hopes that the Government will take steps to establish an adequate time period to give employers' and workers' organizations enough notice to formulate their views and make any comments that they consider appropriate on the draft texts shared by the Government in accordance with Article 5(1).***

## Côte d'Ivoire

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1987)**

The Committee notes the observations of the Federation of Autonomous Trade Unions of Côte d'Ivoire (FESACI), received on 30 August 2016.

*Article 5(1) of the Convention. Effective tripartite consultations.* The Government indicates in its report that the order appointing the members of the tripartite committee on ILO matters has not yet been adopted. However, it adds that the most representative organizations of employers and workers are consulted regularly on these matters. The Government explains in this respect that meetings are initiated prior to the International Labour Conference by the Ministry of Labour concerning the items on the agenda of the Conference. However, the Committee notes that no additional information has been provided in relation to the other matters covered by *Article 5(1)* of the Convention. The FESACI recalls in its observations that the member States of the ILO are required, under the terms of the ILO Constitution, to communicate to the most representative organizations of employers and workers copies of the reports communicated to the ILO. These reports have to be sent to the Office between 1 June and 1 September each year. In its observations, the FESACI indicates that it has been denied the right to make known its views on these reports. The Committee notes that the Government's report was received by the Office on 21 October 2016. The Committee recalls that, "to be 'effective', consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. ... The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions. It should be emphasized that the mere communication of information and reports transmitted to the Office under article 23, paragraph 2, of the Constitution does not in itself meet the obligation to ensure effective consultations since, by that stage, the Government's position will already be final" (see the General Survey on tripartite consultation, 2000, paragraph 31). **The Committee requests the Government to provide specific information on the content and outcome of the tripartite consultations held on all of the matters relating to international labour standards covered by the Convention, including questionnaires concerning items on the agenda of the Conference (Article 5(1)(a)), the proposals to be made in connection with the submission of instruments adopted by the Conference to the National Assembly (Article 5(1)(b)), the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given (Article 5(1)(c)), reports to be made on the application of ratified Conventions (Article 5(1)(d)) and proposals for the denunciation of ratified Conventions (Article 5(1)(e)). The Committee also requests the Government to provide information on the adoption of the order appointing the members of the tripartite committee on ILO matters, and information on the activities of the committee relating to international labour standards.**

## Democratic Republic of the Congo

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Effective tripartite consultations.* The Government indicates that the trade union and employers' elections held between October 2008 and July 2009 enabled 12 occupational organizations of workers to be identified as being the most representative, with terms of office lasting until the next elections, scheduled for December 2013. The most representative occupational organizations of employers are determined on the basis of the number of enterprises affiliated. The Government also indicates that the Ministry of Employment, Labour and Social Welfare convenes sittings of the National Council on Labour (CNT) by an order that it issues to the social partners represented in the CNT, requesting them to submit the names of the titular and alternate representatives of their respective organizations (Article 3 of the Convention). The Committee notes that the Government's report contains no further information on the operation of the consultation procedures required by the Convention. **The Committee refers the Government to its previous observation, in which it points to a serious failure of the obligation to submit the instruments adopted by the Conference, laid down in article 19(5) and (6) of the ILO Constitution. It requests the Government to provide information on the consultations held with the social partners on the proposals made to Parliament upon the submission of instruments adopted by the Conference (Article 5(1)(b) of the Convention). It further requests the Government to provide detailed information on the content of the consultations and the recommendations made by the social partners on each of the matters listed in Article 5(1) of the Convention.**

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

## Djibouti

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)**

*Articles 1 and 3(1) of the Convention. Participation of representative organizations.* The Government reiterates in its report that two legislative texts were drafted in 2013 in consultation with the social partners. These texts were referred to the National Council for Labour, Employment and Social Security (CONTESS) in 2014. The aim of the first

text is to create an institutional framework for setting the issue of representativeness as provided by section 215 of the Labour Code, which establishes that “the representative nature of trade union organizations shall be determined by the outcome of workplace representation elections” and that “the ranking ... thus determined by the workplace elections shall be recorded in an order issued by the Minister in charge of labour”. Nevertheless, the draft order is in preparation, hence the criteria for determining the representativeness of employers’ and workers’ organizations is still to be established. The aim of the second text is to reinforce the electoral procedures to be followed in occupational or national elections, with free and independent elections which are essential for ensuring the formation of legitimate workers and employers’ organizations and also their representativeness. The Government points out that the two draft texts have not been approved by CONTESS, which assigned the task of examining the drafts to the standing committee but the latter did not adopt them. The Government indicates that it will keep the Office informed of any developments in the matter. ***The Committee refers to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and expresses the firm hope that the Government will adopt the abovementioned draft texts as soon as possible so that objective and transparent criteria can be established for appointing workers’ representatives to national and international tripartite bodies, including the International Labour Conference.***

***Article 4(2). Financing of training.*** The Government indicates that a seminar on labour law was held for members of grassroots unions affiliated to the two most representative federations of workers’ unions in Djibouti. The seminar took place from 28 to 31 August 2016 at the National Institute of Public Administration and was funded by the executive secretariat responsible for reform of the administration. In addition, the Operational Action Plan 2014–18, adopted under the national employment policy, includes a component of training on labour legislation for trade union representatives and employers. ***The Committee requests the Government to continue providing information on appropriate arrangements made for the financing of any necessary training for participants in consultation procedures, as provided for by the Convention.***

***Article 5. Tripartite consultations required by the Convention. Frequency of tripartite consultations.*** The Committee notes the detailed record of the meeting of CONTESS that took place on 27 and 28 November 2016, which the Government attached to its report. In this regard, it notes the agenda of the meeting, which included draft texts for the implementation of the Labour Code and also the discussion of unratified Conventions (*Article 5(1)(c)* of the Convention). In this regard, the Committee notes with ***interest*** the ratification proposals adopted unanimously concerning the Maritime Labour Convention, 2006 (MLC, 2006), and the Protocol of 2014 to the Forced Labour Convention, 1930. ***The Committee requests the Government to continue providing detailed information on the content and outcome of the tripartite consultations held on each of the matters referred to in Article 5(1) of the Convention, and in particular to continue to send copies of the records of CONTESS meetings.***

## Dominican Republic

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)***

***Article 5 of the Convention. Effective tripartite consultations.*** In its previous comments, the Committee asked the Government to send its comments on the observations of the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers’ Unions (CASC) and the National Confederation of Dominican Workers (CNTD). In its reply, the Government indicates that both the workers’ and employers’ sectors had received the electronic drafts of the reports sent in 2016 so that they could make their observations. The Committee notes that the activities of the tripartite round table on issues relating to international labour standards have begun, with regulations on its functioning drawn up on a tripartite basis and subsequently revised by the employers pending receipt of the workers’ observations. The Government indicates that tripartite consultations were held on the abrogation and withdrawal of six international labour Conventions. The Committee also notes the Government’s statement that two tripartite meetings were held regarding the revision of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), and that during the meeting of the Labour Advisory Council on 16 May 2017 discussions were held on topics such as labour migration, possible amendments to the Labour Code and the Social Security Act, social security coverage for mobile and casual workers, and reclassification of enterprises. Lastly, the Government indicates that observations from the workers and employers are pending with regard to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), and the Social Protection Floors Recommendation, 2012 (No. 202). The Committee recalls that the effectiveness of consultations presupposes in practice that employers’ and workers’ representatives have all the necessary information far enough in advance to formulate their own opinions (see General Survey of 2000 on tripartite consultation, paragraph 31). ***The Committee requests the Government to provide a copy of the regulations on the functioning of the tripartite round table on issues relating to international labour standards, once they have been adopted. The Committee also requests the Government to supply detailed information on the activities of the abovementioned tripartite round table, particularly the content and outcome of the discussions held in relation to the matters referred to in Article 5(1).***

## El Salvador

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)***

#### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)***

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2017 concerning the application of the Convention. In this regard, the Conference Committee urged the Government to: (i) reactivate, without delay, the Higher Labour Council (CST); (ii) ensure concrete positive developments with regard to the freedom and autonomy of employers' and workers' organizations to appoint their representatives in compliance with the Convention, without intimidation; (iii) ensure adequate protection for the premises of the representative workers' and employers' organizations from violence and destruction; and (iv) report in detail on the application of the Convention in law and practice to the next session of the Committee of Experts.

The Committee also notes the direct contacts mission undertaken in El Salvador from 3 to 7 July 2017, in which consultations were held with the tripartite constituents and recommendations were made, according to which: (i) the Government is encouraged to ensure that additional measures are adopted through social dialogue to ensure the reactivation and full operation of the CST; (ii) the competent authorities are encouraged to ensure that the necessary measures are taken, in consultation with the employers' and workers' organizations concerned, to ensure full respect for the autonomy of employers' and workers' organizations to appoint their representatives; (iii) the Government is invited to consider, in consultation with the employers' and workers' organizations, uniform procedures for the accreditation of such organizations; (iv) the public authorities are encouraged to take all relevant measures to ensure the protection of the premises of the National Business Association (ANEP) and the safety of representatives of the employers' and workers' organizations; (v) with regard to the murder of the trade unionist Mr Abel Vega, the Committee hopes to observe tangible progress with regard to clarification of the facts, identification of the perpetrators and imposition of adequate penalties; (vi) the willingness of the government authorities to engage in social dialogue to address the issues raised by the mission is welcomed and it is recommended that measures are taken to promote a culture of social dialogue, in particular by strengthening the capacities of the social partners to participate constructively in tripartite discussions and ensuring compliance with the ground rules needed to conduct a mature dialogue; and (vii) it is suggested that technical assistance be sought from the ILO in order to follow up these recommendations.

The Committee also notes the observations of the ANEP and the International Organisation of Employers (IOE), received on 30 and 31 August 2017, respectively, alleging non-observance of the Convention by the Government.

*Articles 2 and 3(1) of the Convention. Adequate procedures. Election of representatives of the social partners to the CST.* In reply to the Committee's previous comments, the Government indicates that in its decision of 17 March 2017 the Constitutional Chamber of the Supreme Court of Justice ruled that the Government's request for a definitive list of representatives does not impose an arbitrary requirement or condition that violates the right to freedom of association of the organizations concerned. However, the Court concluded that this does not release the Ministry of Labour and Social Welfare (Ministry of Labour) from its obligation to implement and support processes of social dialogue and tripartite participation. The Court observed that dialogue forums should be promoted between the trade unions so that they can agree on and apply clear and permanent procedures for the election of their representatives, in order to ensure the appointment of representatives of the workers to the CST and their participation therein.

Furthermore, as regards the functioning of the CST, the Government indicates that as follow-up to the Conference Committee's conclusions, a request was made on 1 May 2017 to the legally registered trade union federations and confederations to present their proposals for representatives to the CST. The Committee notes that between 12 and 17 May 2017 three nomination proposals were received from the workers, which made it possible to compose the list of representatives and their respective substitute members in the CST. In this regard, the Government indicates that the unions which submitted their proposals all feature in the register of the National Department of Labour Organizations at the Ministry of Labour, accounting for 56 per cent of active unions, 51 per cent of trade union members, and 82 per cent of registered collective agreements. The Government also indicates that the employers' established in the relevant regulations submitted their list of representatives between 6 June and 4 July, and that by Executive Decision No. 288 of 29 May 2017, the Government members were nominated. The Government adds that on 29 June 2017 the representatives of the three sectors were invited to attend the inaugural meeting of the CST. However, the employers did not attend either the preparatory meeting or the inaugural meeting of the CST, as a result of which it was agreed to convene a new inaugural meeting, which coincided with the meeting with the direct contacts mission. The employers once again declined to participate in the meeting of the CST, alleging non-conformity of the workers' representation mechanism. The Government reiterates in its observations its willingness to implement the procedures indicated and agreed upon in the context of the direct contacts mission to continue promoting social dialogue and agreements between the sectors, thereby contributing to the activation of the CST. The Government emphasizes that the process for the nomination of workers' and employers' representatives was undertaken publicly, with the participation of the previous workers' and employers' representatives, the Secretariat for Civic Participation, Transparency and Anti-Corruption, the Government Ethics

Tribunal and the media. However, the Government indicates that the employers represented by the ANEP, despite having been democratically elected, refused to participate in the ordinary and extraordinary meetings held between December 2016 and July 2017. Lastly, the Government indicates that, in addition to the CST, the State has five tripartite entities and 17 tripartite autonomous institutions, which are fully operational and include, among others, the Salvadorian Social Security Institute, the Housing Social Fund, the Salvadorian Vocational Training Institute and the National Minimum Wage Council.

The Committee also notes the observations made by the ANEP to the effect that the Ministry of Labour distanced herself from the Committee's recommendations regarding the reactivation of the CST. In this respect, the ANEP indicates that, in abolishing the function of the electoral body, the Ministry assumed the power to issue instructions for the election of workers' representatives and appropriated the competence for determining criteria for the nomination of workers' representatives to the CST, thereby committing acts of interference. The Committee also notes that the observations made by various worker groups in the context of the direct contacts mission, according to which two groups of workers' organizations attributed the standstill in the CST to interference by the Government, since the latter reportedly called for a single list adopted by consensus. Moreover, the Committee notes that one of the two abovementioned groups of workers decided not to accept the composition of the CST, while the other group, despite expressing criticism and reservations regarding the nomination process, opted to participate in the CST. The Committee notes that a group bloc of workers' organizations emphasized that one group of workers has been unlawfully monopolizing worker representation in the tripartite institutions for years and criticized the stance of the employers in not attending the inauguration of the CST. Lastly, the Committee notes that in the context of the direct contacts mission all groups of workers' organizations indicated that they did not accept the representativeness criteria applied by the Government.

The Committee notes that, in reply to its previous comments, the Government expresses its willingness to take the necessary steps to promote social dialogue and reactivate the Higher Labour Council (CST). ***The Committee expresses the firm hope that the Government will take the necessary steps to promote and strengthen tripartism and social dialogue in such a way as to ensure the functioning of the CST. The Committee urges the Government to establish without delay, in consultation with the social partners, clear and transparent rules for the nomination of workers' representatives to the CST that comply with representativeness criteria. With regard to the allegations of interference, the Committee hopes that the Government will take the necessary steps to investigate and resolve them. The Committee requests the Government to keep it informed of any developments in this respect.***

***Article 5(1). Effective tripartite consultations.*** The Government indicates that it has still not held tripartite consultations in relation to the documents adopted during the International Labour Conference between 1976 and 2015. The Committee notes the Government's reply indicating that the results of the consultations will be brought to the Committee's attention as soon as the consultations have been held, and that at present, since no defined basis exists for assessing the implications of the submission of labour Conventions and there are conflicting opinions on the repercussions of failure to meet international commitments, the Government is holding consultations and validating procedures with the heads of government authorities and their respective legal departments. The Committee also notes the indication in the observations of the ANEP that, despite the fact that it completed the relevant procedures with the Directorate for International Relations at the Ministry of Labour, it has been unable to obtain copies of the reports to be sent to the ILO. ***The Committee requests the Government to provide information on the results of the tripartite consultations held on the proposals to be submitted to the Legislative Assembly with regard to the submission of the 58 instruments adopted by the International Labour Conference between 1976 and 2015.***

***Technical assistance.*** The Committee notes that in October 2017 the Government requested technical assistance from the Office. ***The Committee hopes that the requested technical assistance will be provided soon and requests the Government to provide information on any activity undertaken in this context.***

## France

### New Caledonia

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

***Articles 2 and 5 of the Convention. Effective tripartite consultations.*** The Government indicates in its report that 12 meetings of the Advisory Labour Commission (CCT) were held between March 2015 and June 2016. The Government also reports effective consultations in the Social Dialogue Council (CDS) under section Lp. 381-3 of the Labour Code of New Caledonia, and in the Special Commission in Congress to develop and monitor economic and social agreements for the period 2016–17. ***The Committee requests the Government to continue providing information on tripartite consultations intended to promote the implementation of international labour standards, and particularly on the content and outcome of the consultations held on the matters concerning international labour standards set out in Article 5(1)(a) and (d) of the Convention.***

## Malawi

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1986)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Tripartite consultations required by the Convention.* **The Committee refers to its previous observations and invites the Government to submit a report containing detailed information on the tripartite consultations held on each of the matters related to international labour standards covered by Article 5(1) of the Convention. It also requests the Government to include information on the nature of any reports or recommendations made as a result of such consultations.**

*Article 5(1)(c) and (e) of the Convention.* *Prospects of ratification of Conventions and proposals for the denunciation of ratified Conventions.* In reply to the Committee's previous comments, the Government indicates that it will consult with the social partners regarding the denunciation of Conventions Nos 50, 64, 65, 86, 104 and 107. The Committee recalls that the ILO's Governing Body recommended the denunciation of Conventions Nos 50, 64, 65, 86, 104 and 107 concerning indigenous workers and the ratification of the most updated instrument, the Indigenous and Tribal Peoples Convention, 1989 (No. 169). In the Committee's 2010 direct request on the Underground Work (Women) Convention, 1935 (No. 45), the Committee noted that the Tripartite Labour Advisory Council approved the denunciation of Convention No. 45 and that the Government was consulting with the social partners on the possible ratification of the Safety and Health in Mines Convention, 1995 (No. 176). **The Committee invites the Government to include in its next report information on the progress achieved to re-examine unratified Conventions – such as Conventions Nos 169 and 176 – in order to promote, as appropriate, their implementation or ratification and to denounce outdated Conventions.**

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

## Nigeria

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

*Consultations with representative organizations.* The Committee recalls that it is important for employers' and workers' organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation. **The Committee asks the Government to report on the results of the legislative reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under this Convention.**

*Tripartite consultations required by the Convention.* The Government indicates in its report that its replies to questionnaires concerning items on the agenda of the International Labour Conference and comments on proposed texts are usually forwarded to the social partners for their input. It also states that social partners participate in the rendering of reports. The Committee recalls that the tripartite consultations covered by the Convention are essentially intended to promote the implementation of international labour standards and concern, in particular, the matters enumerated in *Article 5(1) of the Convention*. **The Committee therefore requests the Government to provide full and detailed information on the content and outcome of tripartite consultations dealing with:**

- (a) **the Government's replies to questionnaires concerning items on the agenda of the Conference and the Government's comments on proposed texts to be discussed by the Conference; and**
- (b) **questions arising out of reports to be made to the International Labour Office under article 22 of the ILO Constitution.**

*Prior tripartite consultations on proposals made to the National Assembly.* **The Committee hopes that the Government and the social partners will examine the measures to be taken with a view to holding effective consultations on the proposals made to the National Assembly when submitting the instruments adopted by the Conference, as required by the Convention.**

*Operation of the consultative procedures.* **The Committee once again requests the Government to indicate whether, in accordance with Article 6, the representative organizations have been consulted in the preparation of an annual report on the working of the consultation procedures provided for in the Convention and, if so, to indicate the outcome of these consultations.**

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

## Peru

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2004)**

The Committee notes the observations of the Autonomous Workers' Confederation of Peru (CATP), which were received on 14 September 2017. **The Committee requests the Government to provide its comments in this regard.**

*Article 2 of the Convention.* *Appropriate procedures.* The Government indicates in its report that the National Labour and Employment Promotion Council (CNTPE) was no longer meeting because the trade union confederations had suspended their participation. In this regard, the Committee notes the CATP's statement in its observations that since January 2017 the three trade union confederations (the CATP, the Single Confederation of Workers of Peru (CUT Perú) and the General Confederation of Workers of Peru (CGTP)) had decided to participate in the activities of the CNTPE

covering 19 draft labour reforms proposed by the Government in relation to collective stoppages, labour inspection and voluntary arbitration, even though they considered that the proposed reforms reduced the rights of workers in the areas concerned. In March 2017, the confederations considered that the reforms were violating labour rights and that there was no consensus on the draft legislation, and so they withdrew from the CNTPE. Nevertheless, the CATP indicates that standards were approved relating to collective stoppages and labour inspection, the bills relating to those areas and to voluntary arbitration were submitted to the executive authority, prior to a tripartite meeting convened on 29 May 2017 by the Ministry of Labour with a view to renewing tripartite dialogue on the pending matters. The CATP adds that the bills did not take account of the confederations' input from January to March 2017. The CATP also indicates that, as a result, on 31 May 2017, the confederations informed the Ministry of Labour and Employment Promotion, by official letter No. 004-2017-CENT/SIND, of their decision to suspend their participation in the CNTPE and also in the National Occupational Safety and Health Council, and indicated that they were considering whether or not to withdraw from these bodies on a permanent basis. ***The Committee hopes that the circumstances which are obstructing the functioning of the CNTPE will be resolved as soon as possible. The Committee requests the Government to provide information on the steps taken to ensure that the tripartite consultations held are effective, so that the CNTPE can resume its activities without delay.***

***Article 5. Effective tripartite consultations.*** The Committee notes the Government's indication in its report that on 4 May 2017 it proposed to examine, within the CNTPE, the possibility of ratifying the Protocol of 2014 to the Forced Labour Convention, 1930. Accordingly, meetings between the social partners, chaired by the Directorate of Fundamental Rights at Work and Occupational Safety and Health, were held with the aim of examining the Protocol. The Government also indicates that draft reports are sent to the most representative organizations of employers and workers before they are sent to the ILO so that these organizations can send their observations in this regard. The Government adds that the observations made by the social partners are included in its reports. The CATP, for its part, maintains that the Government sends the reports to the workers' organizations with very little time for the latter to make their observations. The Committee recalls that, in order to be "effective", consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. The important factor here is that the persons consulted should be able to put forward their opinions before the government takes its final decision. The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions and make any comments that they consider appropriate (see General Survey of 2000 on tripartite consultation, paragraphs 31 and 93). ***The Committee requests the Government to continue providing information on the consultations held on each of the matters relating to international labour standards referred to in Article 5(1) of the Convention. The Committee also expresses the hope, with regard to the procedures required by the Convention, that the Government will take steps to establish an adequate time frame to give employers' and workers' organizations sufficient notice to form their opinions and make any comments they consider appropriate with regard to the draft legislation communicated by the Government, in conformity with Article 5(1).***

## Poland

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)***

***Articles 2 and 5(1) of the Convention. Effective tripartite consultations.*** The Committee notes the adoption on 24 July 2015 of the Act on the Social Dialogue Council and other social dialogue institutions (SDC Act), which entered into force on 11 September 2015. The Government indicates that the Social Dialogue Council (SDC) established under the SDC Act is the forum for tripartite dialogue and cooperation between the tripartite partners which replaced the Tripartite Commission for Social and Economic Affairs. At its first meeting in December 2015, the SDC established eight task teams, including the tripartite Team for International Affairs (SDC-TIA), which is mandated to carry out consultations on the matters covered under the Convention. The Government indicates that the consultations on matters referred to in *Article 5(1)(a), (b) and (d)* of the Convention were held through an exchange of correspondence between representative employers' and workers' organizations. It adds that, following observations made by the employers of Poland in 2014, draft replies to questionnaires and draft reports are now being submitted to members of the SDC-TIA and to the members of the Presidium of the SDC. The Ministry of Family, Labour and Social Affairs submits documents for consultation to the social partners 30 days in advance. During the reporting period, written consultations were conducted with the social partners to examine the possible ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, and the 2014 amendments to the Maritime Labour Convention, 2006, as amended (MLC, 2006). The Committee notes with *interest* that the ratification of the 2014 Protocol was registered on 10 March 2017. With respect to issues arising out of reports to be made under article 22 of the ILO Constitution, the Government indicates that the draft act amending the Act on trade unions and certain other acts extending the right of association pursuant to Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was submitted to the SDC to obtain the views of the social partners. ***The Committee requests the Government to continue to provide information on the content, frequency and outcome of the consultations held on the matters concerning international labour standards covered under Article 5(1)(a)–(e) of the Convention.***

*Article 1. Representative organizations.* In its previous comments, the Committee noted the concerns of the employers of Poland with respect to the determination of the most representative organizations for purposes of the Convention. The Committee requested the Government to provide information on any developments in this regard. The Government indicates in its report that the question of representativeness is addressed in the SDC Act. SDC worker representatives are chosen from representative trade union organizations, national trade unions, federations and confederations pursuant to criteria established under section 23 of the SDC Act. Employers are represented by members of representative employers' organizations and recognized national inter-trade employers' organizations that operate on the basis of the Act on employers' organizations of 23 May 1991 or the Act on crafts of 22 March 1989, pursuant to the criteria established under section 24 of the SDC Act. The Government adds that requests of employers' and workers' organizations to determine their representativeness are required to be submitted every four years and are examined by the Warsaw Regional Court. In this context, an employers' or workers' organization can lose their representative status if they fail to submit a request for repeated determination of representativeness within this timeline. The Government further indicates that the SDC Act was adopted following consultations with employers' and workers' organizations. Pursuant to section 87 of the SDC Act, the SDC must evaluate the functioning of the provisions of the Act and submit recommendations and changes for increasing the organizational autonomy of the Council to the President of the Republic of Poland within 24 months of the date of entry into force of the Act. ***The Committee requests the Government to provide an evaluation of the effectiveness and impact of the Act on the Social Dialogue Council with respect to the matters covered by the Convention.***

*Article 4(2). Training.* The Government indicates that the issue of training has not yet been addressed by the SDC. It adds, however, that the social partners may benefit from the training funds available under the Operational Programme Knowledge Education Development 2014–20 (POWER). The Government considers that it is crucial to strengthen the capacities of the social partners, particularly at the local and regional levels. ***The Committee requests the Government to continue to provide information on any arrangements made to provide training to the participants in the consultative procedures covered by the Convention.***

*Article 6. Annual report.* The Government indicates that, pursuant to section 32(3) of the SDC Act, the President of the Council is required to submit a report to the Sejm and the Senate on the activities of the SDC during the preceding year, no later than 31 May of each year. It adds that the report submitted to Parliament also includes a description of the activities of the SDC-TIA, including the topics addressed and the decisions taken. ***The Committee would welcome receiving a copy of the annual report of the activities of the Social Dialogue Council, with respect to matters relating to international labour standards covered by the Convention (Article 5(1)).***

## Portugal

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)***

The Committee notes the observations of the General Workers' Union (UGT), and the brief observation of the Confederation of Portuguese Industry (CIP), transmitted by the Government. It also notes that the International Organisation of Employers (IOE) supports the observations of the CIP.

*Article 5 of the Convention. Effective tripartite consultations.* The Committee notes, that in its observations, the CIP indicates that improvements have been made to bring together the social partners and the Government through the holding of tripartite meetings. It also notes the observations of the UGT which indicate that, for Conventions which have been ratified or which are to be denounced, the consultation procedures are respected in a timely and appropriate manner. However, the UGT reiterates its previous observations on the procedure followed for the ratification of Conventions, which it considers to be long, complicated and lacking in transparency. The Committee notes the Government's reply, which repeats that feasibility studies on the ratification of new Conventions are complex, as they involve the consultation of several ministerial departments, depending on the subjects addressed by the Conventions in question, that it is often necessary to assess the possibility of making the legislative amendments identified as being essential in the studies, and that this assessment varies depending on the content of the Convention. Moreover, the public administration often lacks the human resources needed to carry out feasibility studies rapidly. The Committee also notes the Government's reply indicating that it has held consultations with the most representative employers' and workers' organizations on all of the matters listed in *Article 5* of the Convention. The Government points out that a feasibility study on the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, is in progress. The Government adds, with regard to the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, that two consultations with the social partners concerning the Government's reply to the questionnaire on the subject were held on 9 and 15 March 2017. The Committee also notes the fact that, in the context of the 106th Session of the International Labour Conference June 2017, the Government held an information session and a technical discussion with the social partners, with a view to determining the composition of the Government delegation during the Conference. Lastly, the Committee notes that on 13 June 2017, the Government held tripartite consultations on violence and harassment in the world of work, on which the first discussion will be held at the 107th Session of the Conference. ***The Committee requests the Government to provide detailed and up-to-date information on the content and outcome of all tripartite consultations held on each of the***

*matters covered by Article 5(1) of the Convention. The Committee also reiterates its hope that progress will continue to be made with regard to tripartite consultations on international labour standards, as required by the Convention, and it requests the Government to continue to keep the Office informed of any developments.*

## Serbia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)**

The Committee notes the observations of the Confederation of Autonomous Trade Unions of Serbia (CATUS), received on 7 July 2017, the observations of the Serbian Association of Employers (SAE), received on 31 August 2017, and the observations of the Trade Union Confederation “Nezavisnost” received on 14 November 2017. The Committee notes that the observations presented by the CATUS, which relate to a strike in an individual enterprise, fall outside the scope of the Convention and it will therefore not address these.

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* The Government recalls that the Social and Economic Council of the Republic of Serbia (SEC), established in 2001, is an independent tripartite body comprised of six Government representatives, six SAE representatives, four CATUS representatives and two Nezavisnost representatives. The Committee notes that the social partners freely choose their representatives to the SEC and their substitutes within their own organizations. The Government indicates that, during the reporting period, the SEC held 21 sessions in which it discussed labour legislation, collective bargaining, social dialogue, education, media, economic and financial matters, and international cooperation. In its observations, Nezavisnost expresses concern with regard to the application of the Convention, indicating that social dialogue at all levels of collective bargaining, labour and social legislation and reform strategy have been reduced to a minimum, while in certain areas it is non-existent. It also observes that not all draft laws in the area of labour and social legislation are submitted to the SEC for its opinion, but instead the Government is submitting legislative proposals directly to the National Assembly without previously consulting the SEC. Nezavisnost provides a series of examples in this respect and urges the Government to establish Rules of Procedure that end this practice. Nezavisnost also observes that the representative workers’ organizations have also been excluded from participating in drafting of labour and social legislation. The Committee notes that the Representativeness Committee, a second-instance authority responsible for determining the representativeness of workers’ organizations, ceased functioning in May 2017. According to Nezavisnost, this has a direct impact upon collective bargaining at all levels. Nezavisnost also observes that the Government has taken over the determination of representativeness, in that the minister may take decisions on the representativeness of an organization without seeking the Committee’s advice. The Committee also notes the observations of the SAE indicating that, contrary to *Article 5(2)* of the Convention, there are no established time intervals for tripartite consultations. It adds that consultation with the social partners on the matters related to international labour standards covered under *Article 5(1)* often occurs late or not at all. ***The Committee requests the Government to provide specific information on the content, outcome and frequency of tripartite consultations held on the matters concerning international labour standards covered by the Convention (Article 5(1)(a)–(e)). It also requests the Government to communicate information concerning any reports or recommendations made as a result of the consultations.***

## Sierra Leone

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1985)**

The Committee notes with *deep concern* that the Government’s report has not been received. It is therefore bound to repeat its previous comments initially made in 2004. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Effective tripartite consultations.* The Committee notes the Government’s report supplied in June 2004 indicating its commitment to promote tripartite consultation throughout the country as well as supporting the tripartite delegation to the International Labour Conference. ***The Committee hopes that the Government and the social partners will examine how the Convention is applied and that the Government’s next report will contain indications on any measures taken in order to implement effective tripartite consultation in the sense of the Convention (Articles 2 and 5 of the Convention).***

The Committee recalls that the Office has the technical capacity to help strengthen social dialogue and support the activities that governments and employers’ and workers’ organizations undertake for the consultations required by the Convention.

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

## Spain

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1984)**

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 and 17 August 2017, respectively. The Committee also notes the Government's replies to the previous observations of the CCOO and the UGT, included in its report.

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* The Committee notes the detailed information provided in the Government's report regarding the consultations carried out with the social partners between 2014 and 2017. With regard to the previous observations of the trade union organizations, the Government indicates that, between 2014 and 2016, the reports on ratified Conventions were sent to the social partners at the same time as they were provided to the ILO. The Government indicates that, on occasions, the reports were not sent first to the social partners, owing to the high number of reports to be drafted and their complex preparation, which entails requesting reports from various ministries. However, it states that it will undertake, as far as possible, to send the reports to the social partners before they are sent to the ILO so that their observations can be incorporated into the corresponding report and that the Government can respond to them. In this context, the UGT indicates in its observations that this year, the Government sent the reports on the ratified Conventions to the social partners on 7 July 2017. The UGT appreciates this change in the Government's approach. Additionally, the UGT and CCOO maintain that the procedure of written consultation is inadequate to guarantee the effective consultation with the social partners required under the Convention. The UGT therefore refers to the need to study the possibility of applying a new consultation procedure, through either a committee specifically in charge of matters relating to ILO activities or a body with general competence in the economic, social or labour fields. The CCOO indicates that no consultations were held with the social partners on the implementation or functioning of the procedures envisaged in the Convention. In its reply, the Government refers to the establishment of the Economic and Social Council in 1991, a governmental consultative body dealing with socio-economic and labour issues, attached to the Ministry of Employment and Social Security. The Government adds that the tripartite consultations were held in a way deemed appropriate, through written communication, and that the social partners did not request that meetings should be held on matters related to the reports. The Committee recalls that in Paragraph 2(3) of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), the possible ways for member States to carry out the consultations required by the Convention are listed. Under the terms of the Recommendation, the consultations should not be undertaken through written communications except "where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient" (see 2000 General Survey on tripartite consultation, paragraph 71). ***The Committee requests the Government to continue providing up-to-date information on the content and outcome of the tripartite consultations held on all matters related to international labour standards covered by the Convention. The Committee also requests the Government to indicate how it takes into account the opinions expressed by the representative workers' organizations on the functioning of effective prior consultative procedures required under the Convention, as well as the possibility of establishing amended procedures in response to the concerns expressed by the trade union organizations in their observations.***

## Suriname

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)**

*Article 5 of the Convention. Effective tripartite consultations.* In its previous comments, the Committee requested the Government to provide information on progress made towards the establishment of the ILO Commission of the Labour Advisory Board (AAC) and on the content and outcome of the tripartite consultations held on the matters concerning international labour standards covered by the Convention. The Government reports that the ILO Commission, a tripartite consultative body within the AAC, was established in 2015 and is currently operating. The Government indicates that the submission documents concerning the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), were submitted to the ILO Commission for advice, its input was taken into account, and the amended documents were to be submitted to the Council of Ministers. The Committee further notes the Government's indication that the reports submitted to the ILO under article 22 of the ILO Constitution in 2016 and 2017 were also submitted for comments to the ILO Commission. The Government indicates that the AAC did not convene special meetings to evaluate unratified Conventions or to discuss questions arising out of reports to be submitted under article 22 of the ILO Constitution. In addition, the questionnaire on the abrogation and withdrawal of Conventions Nos 4, 15, 28, 41, 60 and 67 was not submitted to the AAC for review by the ILO Commission; however, the Government indicates that it consulted the social partners prior to submitting its response to the questionnaire. It adds that, during the reporting period, the AAC focused on reviewing labour legislation, including: amendments to the Act regulating the Labour Advisory Board and to the Labour Inspection Act; a modernized Collective Bargaining Act and new Freedom of Association Act; a modernized Labour Exchange Act; and a new Act on Private Employment Agencies, all of which have been adopted by the National Assembly. The Government states that the National Assembly has placed another series of

seven laws on the agenda of the AAC for review. The Committee also takes note of the 2014 report of the Ministry of Labour, Technological Development and Environment on Tripartism in Suriname, which emphasizes the importance of tripartite consultation and social dialogue in the country and describes the various tripartite bodies and their functions. ***The Committee requests the Government to provide comprehensive up-to-date information on the content and outcome of tripartite consultations held within the AAC and the ILO Commission on all matters concerning international labour standards covered by Article 5(1)(a)–(e) of the Convention.***

## Swaziland

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)**

*Articles 2, 3 and 5 of the Convention. Representativeness. Effective tripartite consultations. Representation of the social partners.* In its previous comments, the Committee requested the Government to provide information on the content and outcome of the tripartite consultations held on the matters regarding international labour standards covered by the Convention (*Article 5*) and the measures taken to select the most representative organizations of employers and workers in the tripartite bodies discussing international labour standards. The Government reports that there are two institutionalized national social dialogue structures in Swaziland: the Labour Advisory Board (LAB) and the National Steering Committee on Social Dialogue (NSCSD). Pursuant to section 2 of the Industrial Relations Act, No. 1 of 2000, the LAB is mandated to: examine items or texts to be discussed by the International Labour Conference (ILC); prepare for the submission of Conventions and Recommendations to the competent authorities; provide measures for the implementation of Recommendations or the ratification of Conventions; address questions arising out of reports submitted under articles 19 and 22 of the ILO Constitution; and examine the possible denunciation of ratified Conventions. The Government adds that the tripartite consultations relating to international standards, as required under *Article 5* of the Convention, are carried out in the LAB. In contrast, the NSCSD was established to facilitate social dialogue in respect of all other socio-economic issues which are not within the scope and mandate of the LAB. The Government indicates that one of the key challenges affecting social dialogue in Swaziland is the absence of clear criteria for determining the most representative employers' and workers' organizations for purposes of the Convention. It adds that discussions in this regard are currently pending before the NSCSD. The Committee refers to its General Survey on tripartite consultations, 2000, paragraph 34, in which it indicates that if in a particular country there are two or more organizations of employers or workers which represent a significant body of opinion, even though one of them may be larger than the others, they may all be considered to be "most representative organizations" for the purpose of the Convention. The Government should endeavour to secure an agreement of all the organizations concerned in establishing the consultative procedures provided for by the Convention, but if this is not possible it is in the last resort for the Government to decide, in good faith, in the light of the national circumstances, which organizations are to be considered as the most representative. ***The Committee reiterates its request to the Government to provide detailed information on the frequency, content and outcome of the tripartite consultations held in the Labour Advisory Board on the matters regarding international labour standards covered by the Convention under Article 5(1)(a)–(e). It also requests the Government to communicate information regarding the tripartite discussions held and the measures taken or envisaged with respect to the development of clear and transparent criteria for selecting the most representative organizations of employers and workers for purposes of the Convention.***

*Article 5(1)(c) and (e). Prospects of ratification of unratified Conventions and proposals for the denunciation of ratified Conventions.* The Government indicates that a time-bound work plan to consider the ratification of the Domestic Workers Convention, 2011 (No. 189), was agreed upon by the LAB on 17 August 2016, but that implementation of the work plan has been delayed due to reasons beyond the parties' control. Therefore, the LAB will discuss revising the timelines set in the work plan in order to envisage the ratification of Convention No. 189 before the end of November 2017. The Government undertakes to keep the Committee informed of progress made in this regard. ***The Committee requests the Government to provide updated information on the content and outcome of tripartite consultations held regarding the possible ratification of up-to-date Conventions as well as in relation to the possible denunciation of outdated Conventions.***

## United Republic of Tanzania

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)**

*Article 5 of the Convention. Effective tripartite consultations.* The Government reports that the Minister responsible for labour matters has appointed new members to constitute the Labour, Economic and Social Council (LESCO). It adds that the newly constituted LESCO is composed of representatives of the Government, employers, workers and other members appointed by virtue of their professions. The Committee notes that the Government has provided no information enabling it to evaluate the application of the Convention. ***Accordingly, the Committee requests the Government to provide specific information on the frequency, object, content and outcome of the tripartite***

*consultations held by the competent tripartite bodies for purposes of the Convention, such as the LESCO and the Zanzibar Labour Advisory Board, on all matters concerning international labour standards set out in Article 5(1) of the Convention, including consultations on the re-examination of unratified Conventions with its social partners.*

*Article 4. Administrative support and financing of training.* The Government reports that it is making every possible effort to strengthen the capacities of the newly appointed members to support effective consultations and functioning of the LESCO. In reply to the Committee's previous comments, the Government indicates that it will consider availing itself of ILO technical assistance in this regard. **The Committee requests the Government to provide updated information on any arrangements made to provide administrative support for the functioning of the LESCO and the Zanzibar Labour Advisory Board and to finance training for their members on the consultative procedures required by the Convention.**

## Turkey

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)**

The Committee notes the observations of the Confederation of Turkish Trade Unions (TÜRK-İŞ), communicated with the Government's report. In its observations, TÜRK-İŞ indicates that the Tripartite Consultative Board does not meet regularly, despite the Tripartite Consultative Board Directive providing that the Board shall meet three times per year and may also hold additional extraordinary meetings, as needed. Moreover, TÜRK-İŞ maintains that the manner in which the representatives of workers' organizations are selected to the Board is not in compliance with *Article 1 of the Convention*, as those selected must be the "most representative organisations of employers and workers enjoying the right of freedom of association", whereas section 4 of the Regulations of the Board provides for the selection of the top three worker confederations with the most members. **The Committee requests the Government to provide its comments in this respect.**

*Article 5(1). Effective tripartite consultations.* The Government indicates in its report that social dialogue in Turkey includes all types of negotiation, consultation and exchanges of information between representatives of government, employers and workers on issues of common interest relating to economic and social policy. It reiterates its previous comments that the Economic and Social Council, the Labour Assembly and the Tripartite Consultative Board are the most important social dialogue mechanisms in Turkey for purposes of the Convention. The Committee notes the information provided by the Government on the meetings held by these three tripartite bodies during the reporting period. In addition, it notes that, in 2014, a fourth tripartite body, the Committee of National Employment Strategy, started meeting twice per year, in June and December. With respect to consultations on matters relating to international labour standards covered by the Convention, more specifically in connection with the re-examination of unratified Conventions (*Article 5(1)(c)*), the Government indicates that the Turkish Employment Agency (İŞKUR) considers Turkish legislation to be in line with the provisions of the Private Employment Agencies Convention, 1997 (No. 181), but has indicated that this issue must be negotiated with the social partners. In this context, the Government refers to national legislation establishing temporary business relationships through private employment agencies, Act No. 6715, which entered into force in May 2016. With respect to tripartite discussions on other matters relating to international labour standards under *Article 5(1)* of the Convention, the Committee refers to its previous comments, in which it noted the observations of workers' organizations, in which the Confederation of Public Employees' Trade Unions indicated that the Government had made no effort to consult the social partners on the application of ILO Conventions. **The Committee therefore requests the Government to provide more detailed information on the specific content and outcome of tripartite consultations held on each of the matters related to international labour standards set out in Article 5(1) of the Convention, including on the re-examination of unratified Conventions (Article 5(1)(c)) and on questions arising out of reports to be made under article 22 of the ILO Constitution (Article 5(1)(d)). The Committee also refers to its comments made in 2015 on the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), and invites the Government to continue to provide information on the consultations held with the social partners concerning the possible ratification of the Private Employment Agencies Convention, 1997 (No. 181), which would involve the immediate denunciation of Convention No. 96.**

## Uganda

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

*Articles 2 and 5(1) of the Convention. Effective tripartite consultations.* In its 2016 observation, the Committee reiterated its request that the Government provide information on the consultations held within the National Tripartite Council and the other tripartite bodies on the matters set out in *Article 5(1)(a)–(e)* of the Convention. The Government indicates in its report that it has constituted a national task force on the review of the application of Conventions and reports on international labour standards to address the issues raised by the Committee in its previous reports. It adds that consultations were held on international labour standards covered by *Article 5(1)* of the Convention and on the implementation of the Decent Work Country Programme, minimum wages, and matters related to the Industrial Court.

*The Committee once again requests the Government to provide specific information on the content and outcome of tripartite consultations held within the National Tripartite Council, as well as other tripartite bodies on all matters concerning international labour standards as set out in Article 5(1)(a) through (e) of the Convention, in particular replies to questionnaires on Conference agenda items (Article 5(1)(a)); proposals to be made to the competent authority or authorities in connection with the submission of instruments adopted by the Conference to Parliament (Article 5(1)(b)); the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)); and reports to be presented on the application of ratified Conventions (Article 5(1)(d)).*

## United Kingdom

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1977)**

The Committee notes the observations of the Trades Union Congress (TUC), received on 26 October 2017. With regard to tripartite consultations on direct ILO matters, the TUC indicates that on occasions where there has been a failure of proper consultation, this has been quickly remedied. It adds, however, that in recent years, in the wider workings of government, there has been a reduction in the number of public bodies upon which trade unions and the interest of working people are actively and properly represented. *The Committee requests the Government to provide its comments in this respect.*

*Article 5 of the Convention. Effective tripartite consultations.* The Committee notes that the Government is continuing to actively consider the ratification of the Work in Fishing Convention, 2007 (No. 188). The Government indicates that the small Tripartite Working Group (TWG) established in early 2014, was expanded later in that same year in order to provide better representation to industry and workers. It includes representatives of government, as well as organizations representing industry and those representing individual fishermen. The Government indicates that the TWG met 14 times and discussed all aspects of the Convention. The TWG is also involved in the development of a proposed legislative package which, subject to ministerial approval, will be made available for public consultation. The Committee also notes that following the round-table discussion held in 2014 on the possible ratification of the Domestic Workers Convention, 2011 (No. 189), no further action has been taken in this regard. It notes the Government's indication that it continues to seek proportionate improvements to the social and employment protections available to domestic workers where particular problems are identified. *The Committee requests the Government to continue to provide updated detailed information on the content and outcome of the tripartite consultations held on matters relating to international labour standards covered by the Convention, including with regard to the re-examination of unratified Conventions such as the Work in Fishing Convention, 2007 (No. 188).*

## Bolivarian Republic of Venezuela

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)**

The Committee notes that, at its 329th Session (March 2017), the Governing Body declared admissible a complaint alleging the non-observance by the Bolivarian Republic of Venezuela of Conventions Nos 26, 87 and 144, presented by a group of Employers' delegates to the 104th Session of the International Labour Conference (2015), pursuant to article 26 of the ILO Constitution. At the abovementioned session, the Governing Body noted the information provided by the Government regarding efforts made to strengthen social dialogue with the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS); however, it regretted the lack of progress in the establishment of a social dialogue round table and action plan referred to in the past by the Governing Body, and recalled that the recommendations made by the high-level tripartite mission that visited the country in 2014 had still not been implemented. Therefore, the Governing Body urged the Government to take measures to ensure that there were no acts of interference, aggression and stigmatization against FEDECAMARAS, its affiliated organizations and their leaders, and to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues. Subsequently, at the 331st Session of the Governing Body (October–November 2017) the Government reiterated its commitment to social dialogue, and informed of two meetings, held on 19 and 25 October 2017, between the Government and the new board of FEDECAMARAS. The Committee welcomes the Government's acceptance, through its communication of 24 November 2017 and its annexes, following the 331st Session of the Governing Body, of an ILO high-level tripartite mission to the country, and the establishment of a tripartite round table, with the presence of the ILO. *The Committee firmly expects that the Government will adopt without delay the necessary measures to enable the high-level tripartite mission to take place, as well as for the establishment of a tripartite round table with the presence of the ILO, and expresses the hope that these measures will lead in the near future to the resolution of all pending issues.*

With respect to its previous comments in 2015, the Committee notes the observations formulated jointly by FEDECAMARAS and the International Organisation of Employers (IOE), received on 18 May 2016, 31 August 2016 and

31 August 2017. The Committee further notes the observations presented by the confederations of workers, the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 8 September 2016 and 18 September 2017. It also takes note of the observations made by the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 23 and 26 August 2016 and 18 September 2017. The Committee notes the responses of the Government to the observations of the social partners, which were received on 11 November 2016 and 24 November 2017.

*Articles 2, 5 and 6 of the Convention. Effective tripartite consultations.* The Committee notes the information provided in the Government's report concerning the establishment of the National Council of Economic Productivity on 19 January 2016, whose participants include representatives of the Government, workers' organizations and enterprises and chambers affiliated to FEDECAMARAS. The Committee notes, however, that employers' organizations maintain in their observations that FEDECAMARAS, despite its representativeness, as is the case of the independent trade unions, has not been invited to participate in the abovementioned Council. On the other hand, the Government indicates that meetings took place between representatives of the Government and of FEDECAMARAS on 8 and 14 October 2015, 11 and 31 January 2017, and on 19 and 25 October 2017. Moreover, the Government indicates that its representatives and those of FEDECAMARAS have exchanged written communications in which both parties have manifested their willingness to continue the dialogue process. In their observations, the IOE and FEDECAMARAS reiterate that the meetings and communications mentioned by the Government do not constitute a consultation or executive dialogue mechanism. They also maintain that there are no institutionalized social dialogue structures in the country, nor has a tripartite dialogue round table been established, as recommended in the report of the high-level mission of 2014. In this respect, the employers' organizations highlight that the Government has adopted important measures in the area of labour without prior consultation with the social partners, such as Executive Decree No. 2158 of 28 December 2015, increases in the minimum wage and the socialist food benefit for men and women workers, as well as the approval of a State of Economic Emergency on 14 January 2016. FEDECAMARAS reiterates that it is not requesting exclusive dialogue, but simply that it be included in the consultations that the Government maintains that it is holding with the social partners. In response, the Government indicates that FEDECAMARAS is referring to a lack of consultation in areas that fall outside the scope of application of the Convention. Moreover, it indicates that the highlighted measures were adopted following discussions in the National Economic Productivity Council. On the other hand, UNETE, CTV, CGT and CODESA maintain that the Government does not transmit copies of its reports on ratified Conventions to the workers' confederations or, alternatively, it transmits such copies only after they have been communicated to the ILO, thereby preventing the workers' confederations from making inputs into the reports. ***The Committee requests the Government to provide information on the consultations held with respect to each of the matters relating to the international labour standards covered under Article 5(1) of the Convention. The Committee further requests the Government to communicate information on the effective consultations held with social partners on the manner in which the functioning of the procedures required by the Convention could be improved. In addition, and in the context of the procedures required by the Convention, the Committee expresses the hope that the Government will take measures to establish a reasonable time period that will provide sufficient advance notice to enable employers' and workers' organizations to form their opinions and make the comments that they consider appropriate in relation to the drafts communicated by the Government, in accordance with Article 5(1).***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 144** (Afghanistan, Argentina, Armenia, Azerbaijan, Belarus, Belize, Bosnia and Herzegovina, Canada, Central African Republic, China, China: Macau Special Administrative Region, Congo, Dominica, Egypt, France: French Polynesia, Guyana, India, Kyrgyzstan, Lao People's Democratic Republic, Malaysia, Mongolia, Netherlands: Curaçao, Pakistan, Panama, Philippines, Romania, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Sri Lanka, Syrian Arab Republic, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, United States, Uruguay, Viet Nam, Yemen, Zambia, Zimbabwe).

## Labour administration and inspection

### Albania

**Labour Inspection Convention, 1947 (No. 81)**  
(ratification: 2004)

**Labour Inspection (Agriculture) Convention, 1969 (No. 129)**  
(ratification: 2007)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 together.

*Articles 3(1)(a) and (b) and (2), and 14 of Convention No. 81 and Articles 6(1)(a) and (b) and (3), and 19 of Convention No. 129. Labour inspection activities in the area of occupational safety and health (OSH) in agriculture.* The Committee notes the Government's indication, in reply to its previous request, that the number of inspections in the agricultural sector has remained at 0.8 per cent of total inspections. The Committee notes in this regard that, as indicated in the Government's Occupational Safety and Health Policy Document and Action Plan (2016–20), nearly half of the workforce in Albania is employed in the agricultural sector. The Committee also notes the Government's indication that no training has yet taken place for inspectors on agriculture-related subjects. ***The Committee once again requests the Government to provide information on the measures taken to secure the enforcement of laws and regulations in agriculture, including with respect to OSH, and to continue to provide information on the number of inspections carried out in that sector. The Committee requests the Government to report on training for labour inspectors on agriculture-related subjects, specifying the subjects, duration, participation and outcomes.***

*Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Conditions of service.* The Committee previously noted the information in the 2009 ILO audit report on labour inspection services that the remuneration for labour inspectors was not attractive and that there was no real human resources strategy for recruitment and career development. The Committee notes the copy of Decision No. 726 of 21 December 2000 on salaries of employees of budgetary institutions provided with the Government's report, which breaks down the monthly salaries of civil servants. ***The Committee requests the Government to indicate whether any measures have been adopted since the 2009 ILO audit report to improve the remuneration scale and career prospects of labour inspectors in relation to other comparable categories of public officials, and requests the Government for clarification regarding the actual remuneration scale and career prospects of labour inspectors in relation to other comparable categories of government employees exercising similar functions, such as tax inspectors or police officers.***

*Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Staffing and material means of the labour inspection services; scope of inspections carried out.* The Committee previously noted the Government's indication that 167 labour inspectors were not sufficient to fully perform the inspection tasks required by law. The Committee notes the Government's indication in its report that the number of labour inspectors employed by the State Labour Inspectorate and Social Services (SLISS) is currently 155 employees, with 37 at the central level and 118 employees at the regional level. The Committee further notes that the Government reports that the regional offices still do not have sufficient office equipment, that the SLISS has only eight vehicles (for 12 regions) and that funds are insufficient for the reimbursement of labour inspectors performing their duties. It notes in this respect the Government's indication in its report submitted under the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), that the main problem for labour inspection is the lack of financial resources, which limits the ability of inspectors to travel to entities that should be inspected. ***The Committee requests the Government to take the necessary measures to ensure that the budget allocated to labour inspection is sufficient to secure the effective discharge of the duties of the inspectorate, given the decrease in the number of labour inspection staff and the continuing inadequacy of equipment and vehicles. The Committee also requests the Government to continue to provide information on the staffing and material means of the SLISS in performing inspections in agriculture, including transportation and local offices.***

*Article 12(1) of Convention No. 81 and Article 16(1) of Convention No. 129. Right of inspectors to free entry of workplaces.* The Committee notes the Government's indication that 90 per cent of inspections are conducted pursuant to a predetermined plan that is developed in cooperation with labour inspectors using the e-inspection portal, with the approval of the regional directorate of inspection. While the remaining 10 per cent of inspections are unscheduled and/or emergency inspections, which can be undertaken without authorization or notification, the Government reports that an authorizing officer shall issue an authorization within 24 hours. The Government indicates that labour inspectors are provided with cards so that they can identify themselves when entering workplaces and conducting inspection operations. The Committee observes that where only 10 per cent of all inspections are unscheduled and/or responding to emergency circumstances, this may undermine the effectiveness of predetermined scheduled inspections because problems may be concealed and thus remain undetected. ***The Committee requests the Government to indicate the procedure by which the authorizing officer must issue an authorization, and the consequences for the inspection if the authorization is not***

*issued within the 24-hour time frame provided. In addition, the Committee requests the Government to indicate how often the 10 per cent of unscheduled and/or emergency inspections actually take place within 24 hours, how often they take place without advance notification, and how often they result in findings of violations or unsafe conditions.*

*Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 22 and 24 of Convention No. 129. Prosecutions and penalties.* The Committee noted, in its previous comments, that the number of fines imposed was relatively low (in 2011, 381 imposed in relation to over 14,000 inspections). In this respect, the Committee notes the Government's indication that Law No. 10279 of 2010 "on Administrative Offences" is used in conjunction with section 48 of Law No. 10433 "on Inspection" to provide appropriate administrative penalties where an infringement is detected during the inspection process. The Government indicates that the law aims to provide fair and equal treatment and non-discriminatory rules to be applied by inspectors. The Government emphasizes that the main purpose of the policy pursued by the SLISS is to reduce the number of fines in a rational way, by focusing on prevention and awareness raising concerning safety and health at work rather than penalties. In addition, while the Committee noted in 2013 that it was not required for the labour inspectorate to pay an advance for the enforcement of fines issued, the Committee notes that the Government indicates that the SLISS repaid penalties in the amount of 11,487,713 Albanian lek (ALL) (approximately US\$101,780) in 2014 and ALL4,070,255 (approximately US\$46,060) from January to May 2015. ***Noting that the policy pursued by the SLISS intends to reduce the number of fines in a rational way, the Committee once again requests the Government to provide information on the number and nature of fines imposed by virtue of labour inspections, the number of judicial executions launched for the enforcement of orders, as well as the number of accidents reported and violations detected during the reporting period. In addition, the Committee further requests information regarding the repayment of penalties by the SLISS, indicating the conditions for such repayment and the total amount of advance payments not reimbursed to the labour inspectorate.***

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

## Bahrain

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1981)**

*Article 3(1) and (2) of the Convention. Labour inspection activities concerning the enforcement of the legislation in relation to the employment of foreign workers.* In its previous comment, the Committee observed that the functions of the labour inspectorate appear to continue to include the enforcement of the legal provisions relating to the employment of foreign workers (in particular the registration of notices that foreign workers had fled from their employers) in cooperation with the authorities responsible for monitoring the nationality, passports and residence of workers, and that these activities had still resulted in the arrest of workers. The Committee further noted that there was no clear distinction between the functions of the labour inspectorate and the Labour Market Regulatory Authority (LMRA) (the body entrusted with controlling compliance with the working conditions set out in work permits of foreign workers), as both had duties linked to working conditions and the application of immigration law. The Committee requested the Government to take measures to ensure that labour inspectors would no longer be involved in workplace controls aimed at arresting, imprisoning and repatriating workers in an irregular situation from the standpoint of immigration law.

In this respect, the Committee notes the information provided by the Government in its report that measures have been taken to separate the functions of the labour inspectorate from those of the LMRA. In view of their different mandates and functions (the labour inspectorate is entrusted with controlling compliance with the provisions of the 2012 Labour Code No. 36, and the LMRA with those in the 2006 Labour Market Regulations Act No. 19), the Government emphasizes there are no joint inspection visits between these two authorities. However, the Committee notes from the information in the 2013 and 2014 annual labour inspection reports, that it appears that the labour inspectorate is still responsible for the registration of notices concerning foreign workers that have fled from their employers (the labour inspectorate received 1,783 such notices in 2013 and 1,199 in 2014). In reply to its request concerning the enforcement of the rights of foreign workers found to be in an irregular situation, the Committee notes the Government's indication that the LMRA monitors the payment of wages of foreign workers and that it may refuse to grant additional work permits to employers who have failed to comply with the relevant legal provisions. The Committee understands from the explanations provided by the Government in its report that the LMRA only monitors the payment of wages to foreign workers in a regular situation, and does not concern workers in an irregular situation, including in such cases where they are liable to expulsion. ***The Committee requests the Government to provide further information on the functions of labour inspectors in relation to the notices made by employers concerning workers that are alleged to have left their employment, and urges the Government to take measures to relieve labour inspectors from any responsibilities relating to activities that are incompatible with the primary functions of labour inspectors as provided for in Article 3(1) of the Convention. The Committee once again requests the Government to specify how the labour inspectorate monitors the manner in which employers fulfil their obligations (such as working conditions, the payment of wages and other benefits due for work carried out) towards foreign workers in an irregular situation, in particular where these workers are subject to a deportation or expulsion order.***

*Articles 10 and 11. Number of labour inspectors and material means necessary for the effective performance of their duties.* In its previous comment, the Committee noted that the number of inspectors and the material means

available to them (particularly suitable offices and computers) were inadequate. It also noted that the expenses of labour inspectors when using their own cars were not always reimbursed. In this respect, the Committee notes the Government's general reference to an increase in the number of labour inspectors and the modernization of the labour inspectorate, without providing further details. **The Committee requests the Government to provide detailed information on the number of labour inspectors at the headquarters of the labour inspection departments and in the different regions, as well as on the material resources available (for example, suitably equipped offices, computers, printers, telephones, etc.), including means of transport. The Committee also once again requests the Government to provide detailed information on the reimbursement of travel expenses incurred by labour inspectors in the course of their duties.**

*Article 17. Effective enforcement of penalties for the violation of labour law provisions.* In reply to its previous request to specify the enforcement functions of all labour inspectors working at the Labour Inspection Department, the Committee notes the Government's indication that labour inspectors have the power to establish infringement reports concerning violations of the Labour Code and to refer criminal offences to the public prosecution. In this respect, the Committee notes from the information contained in the 2014 labour inspection report attached to the Government's report that labour inspectors carried out 11,441 labour inspections in 2014. It further notes from the information in the same report that reference is made to 48 violations (concerning, for example, the payment of wages, compliance with working conditions in labour contracts, and the obstruction of labour inspectors in the performance of their duties), but that the report does not mention violations related to fundamental principles and rights at work and occupational safety and health. It also notes that reference was made to 17 infringement reports and that no information was provided on the number of follow-up actions taken or the penalties issued following the establishment of these infringement reports. **The Committee requests the Government to provide an explanation for the low number of infringements detected (48 violations), and the low number of infringement reports issued (17) in relation to 11,441 labour inspections. The Committee also requests the Government to continue to provide detailed information on the number of violations detected, the legal provisions to which they relate (including those relating to fundamental principles and rights at work and occupational safety and health), the number of infringement reports, the number of cases brought to the courts, and the penalties imposed.**

*Article 18. Provision of adequate penalties for violations of the legal provisions enforceable by labour inspectors.* The Committee notes that the Government has provided the requested information concerning the penalties applicable in relation to a number of labour law provisions, including those related to fundamental principles and rights at work and the obstruction of labour inspectors in their duties. The Committee notes that the maximum fine for violations of equality, non-discrimination and freedom of association provisions is set at a low level. The Committee also notes that while labour inspectors are entrusted with the control of compliance with the provisions concerning working time and wages, no penalties are provided for non-compliance with the relevant provisions in the Labour Code. **The Committee requests the Government to take measures to ensure that adequate penalties are provided for by national laws or regulations in relation to all violations of the legal provisions that are enforceable by labour inspectors.**

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

## Bangladesh

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)**

*Articles 2, 4 and 23 of the Convention. Labour inspection in export processing zones (EPZs) and special economic zones (SEZs).* In its previous comments, the Committee noted that the Bangladesh Export Processing Zones Authority (BEPZA) remained responsible for securing the rights of workers in EPZs (and that the labour inspectorate of the Ministry of Labour and Employment did not carry out any inspections in these zones), and expressed deep concern that the Government had not yet given effect to the 2014 conclusions of the Committee on the Application of Standards (CAS) to bring EPZs within the purview of the labour inspectorate. In this respect, the Committee noted that a draft EPZ Labour Act had been prepared, in relation to which the International Trade Union Confederation (ITUC) raised a number of concerns, including that the supervision of EPZs would remain vested with the BEPZA, and that the powers and functions of the EPZ labour courts and the EPZ Labour Appellate Tribunal would be severely limited in comparison with courts established under the Bangladesh Labour Act (BLA), 2006.

Further to the Committee's reiterated request to bring EPZs and SEZs under the purview of the labour inspectorate, the Committee notes the Government's indication in its report that it is proposed to modify the current draft EPZ Labour Act to provide for labour administration and inspection in EPZs under the BLA, and that a relevant draft would be shared with the Office in due course. However, the Committee notes that the information provided in the Government's report under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), which suggests that, despite structural changes being made, the administration and inspection in EPZs will remain separate from those under the BLA. In this context, the Committee also notes that the Government expresses the view that the BEPZA has successfully performed its duties in the area of compliance for the last 35 years, through the use of counsellors in the area of labour, environment, industrial relations, fire and building safety. **Noting with deep concern that it has now been more than three years since the CAS request on this matter, the Committee urges the Government to complete its revised**

**draft in the very near future so that the EPZ Labour Act will bring EPZs under the purview of the labour inspectorate, as requested by the CAS in 2014, and that the same will be done in relation to SEZs.**

*Article 6. Status and conditions of service of labour inspectors.* In its previous comments, the Committee noted that retaining labour inspectors within the labour inspection services was problematic and that a number of recently recruited labour inspectors had left the Department of Inspection for Factories and Establishments (DIFE), after having been trained, to take up work with other government services. In this regard, the Committee requested that the Government review the professional profiles and grades of labour inspectors to ensure that they reflect the career prospects of public servants exercising similar functions within other government services, such as tax inspectors or the police.

The Committee notes that the Government, in reply to the Committee's request, refers to a revised salary structure for all government employees, available on the website of the Ministry of Finance in the Bengali language. According to the Government, the revised salary structure provides similar conditions for tax inspectors, labour inspectors and police officers. The Government also refers to a study to be undertaken with the assistance of the ILO, to discover the causes for the high attrition rate. **Recalling from the report of the 2015 direct contacts mission (undertaken at the request of the CAS) that career prospects within the labour inspection services are not as favourable as those in the career civil service, the Committee once again requests the Government to provide information on the professional grade structure enjoyed by labour inspectors and other government employees exercising similar functions as well as further information on the salary and benefit structure applicable to labour inspectors. The Committee also requests the Government to provide information on the outcome of the study on the reasons for the high attrition rate of labour inspectors.**

*Articles 7, 10 and 11. Strengthening the human and material resources of the labour inspectorate.* The Committee previously welcomed the increase in the number of labour inspectors from 43 to 283 (between 2013 and 2015), but noted with regret that the Government had failed to provide any new information in 2016 on the progress made with the recruitment of labour inspectors for the filling of the 575 approved labour inspection positions. The Committee notes the information provided by the Government in its report that 230 of the 575 positions still remain vacant, and that recruitment is ongoing. The Committee also notes the Government's indication, in reply to the Committee's request for further information on the material resources available to the labour inspectorate, that the budgetary allocation of the DIFE has continued to significantly increase; representing a fourfold increase from 2013–14 to 2017–18. In addition, the Committee notes the Government's indication that an important project to further strengthen the capacity of the DIFE is under way. The Committee further notes, in reply to the Committee's request, the information provided by the Government on the increase in equipment and transport facilities available to the labour inspectorate. **The Committee requests the Government to specify the current number of labour inspectors working at the DIFE and to provide information about the training provided to new recruits including the subjects covered and the duration of such training. The Committee encourages the Government to continue to make every effort to fill all of the 575 labour inspection posts that have already been approved, with a view to ensuring the recruitment of an adequate number of qualified labour inspectors, taking into account the number of workplaces liable to inspection. The Committee also requests that the Government continue to provide information on the level of equipment and facilities available to the labour inspectorate.**

*Articles 12(1), 15(c) and 16. Inspections without previous notice. Duty of confidentiality in relation to complaints.* In its previous comment, the Committee noted that in 2014, only 2.5 per cent of all inspections were random or complaints-driven inspections without prior notice and it emphasized that, in that situation, the duty to maintain confidentiality of labour inspectors that an inspection was made as a result of a complaint, and the efficiency of inspections, were put at risk. In this respect, the Committee notes the Government's reply, in relation to the Committee's request for steps to ensure that a sufficient number of unannounced labour inspections (random or complaints-driven inspections implemented without prior notice) is undertaken, that during 2016–17, 20 per cent of all inspections were unannounced. The Committee notes that the Government reiterates, in reply to its previous requests to enshrine in law a requirement that the existence of a complaint and its source are kept confidential, that the absence of such a provision in the BLA, does not undermine confidentiality in practice. However, the Government adds that it is open to considering the codification of this duty in the context of the proposed review of the BLA. **The Committee urges the Government to codify the duty of confidentiality, either in the context of the proposed review of the BLA or in other regulations or guidelines concerning labour inspection, for the purpose of legal clarity. The Committee requests that the Government provide information on the results of unannounced inspections covering investigations of accidents or addressing of complaints, including the nature of resolutions reached, violations identified and sanctions applied.**

*Articles 17 and 18. Legal proceedings, effective enforcement and sufficiently dissuasive penalties.* The Committee notes that the Government, in reply to the Committee's request for statistical information to enable the assessment of effective enforcement by the labour inspectorate, once again provides information on the number of workplaces inspected and the cases filed with the labour courts, but that it does not provide the requested information on penalties proposed by the inspectorate in connection with their detected violations or on the specific outcome of these cases (such as the imposition of fines or sentences of imprisonment). The Committee also notes that the Government, in reply to the Committee's request for information on the measures taken to ensure that penalties for labour law violations

are sufficiently dissuasive, indicates that the review of the amount of penalties might be considered in the context of the proposed review of the BLA. *The Committee requests the Government to provide information on the measures introduced or envisaged, in the context of the proposed legislative reform, to ensure that penalties for labour law violations are sufficiently dissuasive and, where applicable, to improve the proceedings for the effective enforcement of the legal provisions. The Committee also once again requests that the Government specify how many legal staff with responsibility for the enforcement of legal provisions are employed at the DIFE, and to provide information on the penalties recommended by the inspectorate, along with any relevant guidelines, and the outcome of the cases referred to the labour courts.*

The Committee previously noted that freedom of association cases (including cases of anti-union discrimination) are addressed by the Department of Labour (DOL) which is, among other things, responsible for conciliation and mediation, and it indicated that cases of anti-union discrimination are not generally appropriate for conciliation or mediation and in any event must not undermine strict enforcement of applicable laws. *The Committee requests the Government to provide information as to why violations of freedom of association are dealt with by the DOL, rather than the DIFE, and to provide detailed information on the manner in which it secures the enforcement of the legal provisions relating thereto.*

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

## Benin

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2001)**

*Articles 20 and 21 of the Convention. Publication and communication of an annual inspection report.* The Committee notes with *regret* that no annual inspection report has been prepared or communicated to the ILO since the ratification of the Convention in 2001. However, it welcomes the information supplied by the Government in its report to the effect that periodic activity reports are drawn up by the departmental labour directorates and by the Directorate-General for Labour. It therefore considers that data for the preparation of annual inspection reports should already be available. The Committee also notes that the Government has requested technical assistance from the ILO with regard to the preparation of these annual reports. *The Committee urges the Government to take all possible measures with the requested ILO normal technical assistance, to ensure that annual labour inspection reports are published and sent to the ILO in the very near future.*

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

## Burundi

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)**

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU) received in 2015 regarding the lack of material resources of the labour inspection services.

*Article 3 of the Convention. Duties of labour inspectors.* The Committee notes that, in reply to its previous request regarding the need to ensure, as established in *Article 3(2)*, that any further duties entrusted to labour inspectors do not interfere with the effective performance of their primary duties, the Government merely reiterates that, in addition to the duties of labour inspection set out in section 156 of the Labour Code (which correspond to the primary duties set out in *Article 3(1)* of the Convention), inspectors are responsible for resolving labour disputes. The Committee notes that these additional duties regarding the resolution of disputes are provided for in sections 181 et seq. (individual disputes) and 191 et seq. (collective disputes) of the Labour Code. It recalls that, according to its most recent analysis of available information, in practice the labour inspectorate has deviated from its primary role and is focused on dispute resolution. *In the absence of information demonstrating that this trend has been reversed, the Committee urges the Government to take the necessary measures to ensure that the additional duties entrusted to labour inspectors, particularly for the settlement of disputes, do not interfere with the performance of their primary duties as specified in Article 3(1). It also requests the Government to provide information on the measures taken in this regard and on the time and resources dedicated by labour inspectors to their various duties.*

*Article 7. Recruitment and training of labour inspectors.* The Committee notes the Government's indication that the specific duties of labour inspectors are not taken into account in their recruitment and that labour inspectors received training until 2014. The Committee recalls that under *Article 7*, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties and shall be adequately trained for the performance of their duties. *The Committee requests the Government to take the necessary measures to improve recruitment and to ensure adequate and continued training of inspectors.*

*Article 10. Sufficient numbers of labour inspectors.* The Committee notes the information provided by the Government regarding the composition of staff of the labour inspectorate (11 labour inspectors responsible for the monitoring of the application of legal and regulatory provisions and the resolution of labour disputes and three labour controllers responsible for gathering labour statistics). The Committee recalls that, under *Article 10*, the human resources assigned to the inspection services must be determined on the basis of relevant information, and particularly: the number,

nature, size and situation of the enterprises or establishments liable to inspection; the number and classes of workers employed in these enterprises or establishments; and the number and the complexity of the legal provisions to be enforced. **The Committee requests the Government to provide information on this subject.**

*Articles 11 and 16. Material resources and inspection visits.* The Committee notes the information provided by the Government in reply to its previous request regarding the resources available to labour inspectors for the performance of their duties. In this regard, the Government emphasizes that inspections are not carried out as thoroughly as necessary because the labour inspectors do not have sufficient means of transport and material resources. **The Committee requests the Government to take the necessary measures to improve the means of transport and material resources available to inspectors for the effective performance of their duties and to provide information on the measures taken in this respect.**

*Articles 20 and 21. Annual inspection report.* The Committee notes that the annual report has not been communicated to the ILO. **The Committee requests the Government to take the necessary measures to ensure that the central inspection authority publishes an annual report on the work of the inspection services under its control, containing information on the matters set out in Article 21(a)–(g) of the Convention, and that this report is communicated to the ILO in the form and within the time limits set out in Article 20.**

## Guatemala

### **Labour Inspection Convention, 1947 (No. 81)** (ratification: 1952)

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 1994)

In order to provide a comprehensive view of the issues relating to the application of the ratified labour inspection Conventions, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, received on 30 August 2017, on the legislative reform examined below and on the resources, functions and training of labour inspectors.

The Committee notes the Government's indication in its report that the Labour Code (Decree No. 1441) has been amended by Decree No. 7-2017 promulgated by the Congress of the Republic, and published on 6 April 2017.

*Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129. Authorization for labour inspectors to enter at any hour of the day or night any workplace liable to inspection.* The Committee notes that section 281(a) of the Labour Code, as amended by Decree No. 7-2017, limits the entry of inspectors into any workplace liable to inspection to the workday, in accordance with internal workplace rules or the authorization issued by the Ministry of Labour and Social Welfare. The Committee also notes that the previous wording of section 281 empowered inspectors to visit workplaces at different hours of the day and night, if work was carried out at that time. In this regard, the Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, according to which the legislative reform enables employers to restrict the entry of inspectors to the hours of the working day, which are established by internal workplace rules, even though many complaints concerning violations of labour law are related to overtime work or work performed outside the usual hours, often at night. **Recalling that pursuant to Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice any workplace liable to inspection at any hour of the day or night, the Committee requests the Government to adopt the necessary measures to ensure full compliance with these provisions.**

*Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129. Notification of the presence of inspectors unless such notification may be prejudicial to the performance of inspection duties.* The Committee notes that section 281 of the Labour Code, as amended by Decree No. 7-2017, provides that labour inspectors shall provide credentials indicating their identity, their appointment and the objective of the inspection, in order to benefit from the obligations and powers set out in the Labour Code. However, the Committee notes that the legislation does not provide for an exception to the requirement of the notification of the presence of inspectors through the provision of credentials indicating their identity and appointment, while *Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129* provide that inspectors shall notify the employer or her/his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties. **The Committee requests the Government to take the necessary measures to ensure that inspectors have the power to omit to notify their presence to the employer or her/his representative if they consider that such notification may be prejudicial to the performance of their duties, in accordance with paragraph 2 of Article 12 of Convention No. 81 and paragraph 3 of Article 16 of Convention No. 129.**

*Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Legal or administrative proceedings in the case of violations of, or failure to observe, legal provisions enforceable by labour inspectors.* With reference to its previous comment on the process of imposing penalties for violations of labour legislation, the Committee notes with

*interest* that Decree No. 7-2017 amends sections 271, 272 and 281 of the Labour Code and provides that labour inspectors shall be empowered to adopt the measures listed in paragraph (f) of section 281, including the power to initiate the process of imposing administrative penalties through compliance orders for violations of labour provisions or the obstruction of labour inspectors, and the power to order the cessation of work in cases of serious or imminent risk to workers' safety and health. Decree No. 7-2017, through the amendment of section 415 of the Labour Code and the introduction of sections 417 and 418, recognizes the capacity of the Ministry of Labour and Social Welfare, through the General Labour Inspectorate, to take direct action to promote and remedy violations of the labour and social welfare legislation through administrative action or, failing that, the initiation of administrative proceedings. ***Taking due note of the legislative reform of 2017, the Committee requests the Government to provide information on the application in practice of the new provisions respecting the powers of labour inspectors to take measures listed in paragraph (f) of section 281 of the Labour Code, as amended by Decree 7-2017, including to impose penalties or prohibitory orders. In this regard, the Committee requests the Government to provide detailed information on the compliance orders on violations of labour provisions issued by labour inspectors, and the action proposed through proceedings, if administrative measures have failed to produce results.***

*Article 18 of Convention No. 81 and Article 24 of Convention No. 129. Obstruction of labour inspectors in the performance of their duties. Adequate and effectively enforced penalties.* With reference to its previous comment on the obstruction of labour inspectors in the performance of their duties, the Committee notes with *interest* that sections 269 and 271(3) of the Labour Code, as amended by Decree No. 7-2017, provide that: (a) in the event that the employer or her/his representatives or workers or trade unions and their representatives, refuse to collaborate with the inspection services to verify compliance with labour provisions for which violations may be penalized with fines, the procedure for penalizing the person responsible shall be commenced and the process of inspection continued; (b) the obstruction of the process of inspection by the employer or her or his representatives, or by workers or trade unions or their representatives, within the meaning of section 281 of the Labour Code, shall constitute an offence subject to penalties. Moreover, with reference to the need for sufficiently dissuasive penalties that are effectively enforced, the Committee notes that section 272 of the Labour Code, as amended by Decree No. 7-2017, sets out the criteria and the procedure for the imposition of penalties by departmental delegates of the General Labour Inspectorate. However, the Committee notes the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, alleging that inspectors do not in practice apply the penalties set out in the law because the Ministry of Labour and Social Welfare has not adopted the necessary administrative measures for this purpose. ***Taking due note of the legislative reform of 2017, the Committee requests the Government to provide its comments on the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala, and to provide detailed information on the number of penalties imposed, including the amounts of fines.***

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

## India

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)***

The Committee notes the observations made by the International Organisation of Employers (IOE) received on 1 September 2017, reiterating the statements made by the Employer members during the discussion of the application of the Convention by India in the Conference Committee on the Application of Standards (CAS) in 2017.

### ***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)***

The Committee notes the 2017 conclusions of the CAS on the application of this Convention by India. The Committee recalls that this case was also discussed by the CAS at the 104th Session of the International Labour Conference in June 2015.

*Articles 6, 10 and 11 of the Convention. Material and human resources at the central and state levels.* The Committee notes that the Government provided written information to the CAS in 2017 on the number of labour inspectors (in relation to 32 of 36 states). It also notes that the Government refers, in its report, to budgetary constraints, but indicates that the strength of the staff is generally adequate for inspection needs and that, where necessary, staff is employed on a temporary basis. With respect to the hiring of temporary staff, the Committee recalls that, pursuant to *Article 6*, the status and conditions of service of inspection staff should be such that they are assured of stability of employment and are independent of changes of government and of improper external influences. ***The Committee requests the Government, in line with the 2017 conclusions of the CAS, to increase the resources at the disposal of the central and state government inspectorates, and to provide information on the working conditions and transport facilities of the labour inspection services therein. It requests the Government to continue to provide information on the number of labour inspectors in all states. Recalling that, as public servants, labour inspectors are generally appointed on a permanent basis (General Survey on labour inspection, 2006, paragraph 203), the Committee further requests the Government to specify the manner in which it is ensured that temporary inspectors are independent of changes of Government and of improper external influences, and to provide information on the number of temporary staff employed during the reporting period.***

*Articles 10 and 16. Coverage of workplaces by labour inspections. Self-inspection scheme.* The Committee previously noted that mandatory self-assessments (required by employers employing more than 40 workers) are among the sources of information used by the Central Analysis and Intelligence Unit (CAIU) to draw a conclusion on a prima facie evidence of labour law violations, and a decision to enter (or not) the relevant workplace in the computerized system for inspection visits to be carried out. In this context, the Committee noted the observations made by the Centre of Indian Trade Unions (CITU) and the Bharatiya Mazdoor Sangh (BMS) pursuant to which there was an absence of any mechanism for the verification of information supplied through the self-certification scheme.

The Committee notes the Government's indication to the CAS in 2017 that self-inspections had been adopted with a view to encouraging voluntary compliance for health and safety issues at workplaces and were different from inspections. Self-inspections did not replace labour inspections but were rather an additional mechanism for compliance. The Committee notes the additional information provided by the Government that the scheme of self-certification had been adopted by a large number of states, but had not yet become operational in most of them. The Government adds that in the few states in which the self-certification scheme had become operational, it was backed by a very effective system of random inspections and inspections in response to complaints. ***The Committee once again requests the Government, in line with the 2017 conclusions of the CAS, to provide information on how the information submitted through self-certificates is verified by the labour inspectorate, in particular in relation to health and safety inspections.***

*Articles 12 and 17. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous warning. Code on the Wages Bill and ongoing legislative reform.* The Committee notes that the Code on Wages, 2017 Bill (the Bill) currently before Parliament is proposed to repeal the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948, which specify the powers of labour inspectors, including the entry into workplaces, to enforce wage-related legislation. The Committee notes that the Bill does not explicitly refer to the principles contained in *Article 12(1)(a)* and *(b)*, but provides that the governments at the state level may lay down separate inspection schemes (including the generation of a web-based inspection schedule). Moreover, the Bill renames labour inspectors as "facilitators" and requires inspectors to give previous warning and provide additional time to rectify a violation before any penal procedures may be initiated. The Committee notes that this Bill is part of an ongoing legislative reform, and recalls that the CAS requested the Government in 2015 and 2017 to take measures to ensure that any legislation developed was in conformity with the Convention. ***The Committee requests the Government, in line with the request of the CAS, to ensure that any legislation prepared in the context of the ongoing legislative reform complies with the principles of the Convention and to provide information on the consultations undertaken with the social partners thereon. In this respect, the Committee requests the Government to take the necessary measures to ensure that the Code on Wages explicitly includes the free initiative of labour inspectors to enter workplaces without prior notice, in conformity with Article 12(1)(a) and (b) of the Convention. The Committee also requests the Government, in line with the 2017 conclusions of the CAS, to provide information on the discretion of labour inspectors to initiate prompt legal proceedings without previous warning, where required, by indicating the total number of violations detected and the number of legal proceedings initiated by labour inspectors, distinguishing between those cases where a prior warning had been issued beforehand and where immediate enforcement action had been implemented.***

*Articles 2, 4 and 23. Labour inspection in special economic zones (SEZs).* In its previous comments, the Committee noted the Government's indication that very few inspections had been carried out in SEZs. The Committee notes that the Government provided written information to the CAS in 2017, indicating that a tripartite meeting was held in May 2017 to discuss the effectiveness of labour inspection following the delegation of inspection powers to the Development Commissioners, and that a regular review of the implementation of labour laws in SEZs would be developed in due course. The Government also expressed the view that, despite their function of attracting investment, Development Commissioners are able to exercise their functions without a conflict of interest. In addition, the Committee notes that the Government, in reply to the request of the CAS in 2017, provides some statistical information on the number of inspection visits, violations detected and penalties imposed in relation to five SEZs in which inspection powers have been delegated to the Development Commissioners and six SEZs in which inspection powers have not been delegated. Unannounced inspection visits have been undertaken during 2016–17 in only one of the five SEZs exercising delegated inspection powers, and in only two of these five SEZs during the prior two years (2014–15 and 2015–16). The Government's information further indicates that, for the same three-year period, unannounced inspections have been carried out in only two of the six SEZs where inspection powers have not been delegated. Finally, the Government's statistical information indicates that penalties have been imposed in only two of the five SEZs exercising delegated inspection powers, and in only five cases in those two SEZs during 2016–17. ***The Committee requests the Government, in line with the 2017 conclusions of the CAS, to ensure that effective labour inspections are conducted in all of the existing SEZs. It also requests the Government to specify the number of SEZs in which enforcement powers have been delegated to Development Commissioners and to provide detailed statistical information on labour inspections in all SEZs, including the number of enterprises and workers in each SEZ and the number and nature of offences reported, the number of penalties imposed, the amounts imposed and collected and criminal prosecutions and prison terms imposed, if any.***

*Articles 4, 20 and 21. Availability of statistical information on the activities of the labour inspection services at the central and state levels.* The Committee notes that, once again, no annual report on the work of the labour inspection services has been communicated to the Office. It notes from the information provided by the Government to the CAS in 2017 that, in view of the federal structure of the country and the sovereignty of the states, there is no statutory mechanism for the states to furnish data to the central Government. Such information is provided by the states on a voluntary basis on various labour-related matters, and the Government provided information to the CAS in relation to those states for which information was available. During the discussion in the CAS, the Government referred to the strengthening and modernization of the collection of statistics by the Labour Bureau, and it reiterated its willingness to seek technical advice from the ILO regarding the preparation of annual labour inspection reports and establishments of registers of workplaces liable to inspection. The Committee also notes the observations made by the IOE that the federal structure of the country does not justify the failure to communicate information. ***The Committee urges the Government to take the necessary measures to ensure that the central authority, at the central level or the state level, publish and submit to the ILO annual reports on labour inspection activities containing all the information required by Article 21. The Committee encourages the Government to pursue its efforts towards the establishment of registers of workplaces at the central and state levels and the computerization and modernization of the data collection system, and to provide detailed information on any progress made in this respect.***

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

*[The Government is asked to reply in full to the present comments in 2018.]*

## Japan

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)***

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC–RENGO) and the Japan Business Federation (NIPPON KEIDANREN) submitted with the Government's report, the latter of which were also sent in a joint communication with the International Organisation of Employers (IOE).

*Articles 3(1)(b) and 13 of the Convention. Preventive measures for workers engaged in decommissioning work and decontamination work with radioactive materials.* The Committee takes due note of the information provided by the Government, in its report in response to the Committee's previous request, that the rate of violations detected in inspections in the Fukushima prefecture related to decontamination and decommissioning works has declined since 2013. In 2014 and 2015, the number of business operators subject to inspections increased in both decommissioning work (from 226 business operators to 309) and decontamination work (from 1,152 business operators to 1,299), while the percentage of those operators where violations were detected decreased, from approximately 60 per cent to 54 per cent in decommissioning work and from approximately 67 per cent to 65 per cent in decontamination work. The Government states that in workplaces where violations are acknowledged, measures are taken that are necessary for ensuring the working conditions provided for in labour standards and for the safety and health of workers. The Government indicates that business operators who acknowledged committing these violations were given guidance for rectification and many of them had already made rectifications. The Government further indicates that since the earthquake in 2011, four business operators engaged in decommissioning work and ten business operators engaged in decontamination work had been referred to the Public Prosecutor's Office by the Fukushima Labour Bureau including a case of covering dosimeters with lead covers to disable dose verification and a case of failure to provide notification of industrial accidents, without delay, to the Chief of the Labour Standards Inspection Office. Regarding the disabling of dosimeters, the Committee notes the information provided by the Government in its report on the Radiation Protection Convention, 1960 (No. 115), concerning the measures taken to prevent subsequent violations, including requiring the undertaking of a survey on the actual status of radiation dose management at the Fukushima Daiichi Nuclear Power Station, and measures to verify if there are inconsistencies by requiring workers to wear glass badges and audible alarm personal dosimeters. These measures are verified by the Labour Standards Inspection Office and workers engaged in decommissioning work are surveyed on a regular basis to enable anonymous complaints on inappropriate radiation dose measurements.

The Committee notes the statement by the JTUC–RENGO that the incidence of violations related to decommissioning work of the Fukushima Daiichi Nuclear Power Station has been increasing, and that there are many business operators who are operating in violation of regulations. It further indicates that it is necessary to further strengthen guidance and supervision with respect to violations of labour regulations. ***With reference to its comment on Convention No. 115, and noting that inspectors continue to detect violations in the majority of inspections undertaken with respect to both decommissioning and decontamination work, the Committee urges the Government to indicate the causes of the violations and to strengthen its efforts to secure the enforcement of applicable labour standards in those areas. It requests the Government to continue to provide information on the number of inspections undertaken with respect to decommissioning and decontamination works, the number and nature of violations detected, the number of anonymous complaints and how often these result in detection of violations, and the number of cases referred to the Public Prosecutor's Office. It further requests the Government to provide detailed information on the outcome of the 14 cases relating to decontamination work referred to the Public Prosecutor's Office, including the specific penalties applied.***

*Articles 10 and 16. Sufficient number of labour inspectors.* The Committee previously noted that while the number of labour inspectors had decreased between 2011 and 2013, the policy of reducing the number of new recruits (instituted in 2011) had been reversed in 2014.

The Committee notes the statement of NIPPON KEIDANREN that Labour Standards Inspection Offices exert their best efforts to strengthen supervision and that they must monitor in a more efficient and cost-effective manner. The Committee also notes the indication of the JTUC-RENGO that the Labour Standards Inspection Offices must be reinforced by securing adequate numbers of labour standards inspectors to ensure the efficacy of labour standards-related regulations over the long term.

The Committee notes the Government's indication that efforts have been made to ensure that there is the necessary number of inspectors to strengthen the Labour Standards Inspection Offices, and that these efforts will continue. In this respect, it notes with *interest* the Government's indication that as of March 2017, there were 4,002 inspectors (up 54 from 2014, and higher than the number of inspectors previously noted over the 2011–14 period). It notes that 212 inspectors were appointed in 2016, including 61 female inspectors, a greater number than recruited each year since 2010. The Government further indicates that, in order to carry out effective inspections of workplaces, inspection plans have been formulated by each Labour Standards Inspection Office and efforts are being made to maximize the volume of inspections by simplifying and rationalizing clerical work within the agencies. The Government indicates that efforts will continue to be made to secure the number of labour standards inspectors and efficiently carry out inspection. The Committee notes in this respect a slight decrease in the number of inspections undertaken, from more than 178,000 inspections undertaken in 2013 (and between 173,000 and 176,000 in 2011 and 2012) to 170,000 inspections undertaken in 2015, including fewer periodic inspections. ***Taking due note of the measures undertaken by the Government, the Committee requests the Government to continue to provide information on the measures taken to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate. It requests the Government to continue to provide information on the number of labour inspectors, disaggregated by both prefecture and gender.***

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

## Mauritania

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)***

The Committee notes the observations of the Free Confederation of Mauritanian Workers (CLTM), received on 25 July 2017, and the Government's reply to them. It also notes the observations of the General Confederation of Workers of Mauritania (CGTM), received on 4 September 2017. ***The Committee requests the Government to send its comments on the observations of the CGTM.***

The Committee emphasizes that, further to a request for technical assistance from the Government, the ILO undertook in 2016 an audit of the needs of the labour administration and inspectorate (2016 audit). Noting that the recommendations of the audit correspond to a large extent to the Committee's previous comments, the Committee welcomes the fact that a roadmap has been drawn up to implement a number of these recommendations.

*Article 3(2) of the Convention. Additional duties. Conciliation and mediation.* Noting the recommendations of the 2016 audit in this regard, the Committee notes with *interest* the Government's indications that Order No. 0743 of 23 August 2017 establishing the structure and territorial competencies of regional labour inspectorates has separated the structures dealing with enforcement of the labour legislation from those responsible for dealing with labour disputes. The Committee notes that, under section 2 of the Order, regional labour departments are now responsible for settling labour disputes while labour divisions and districts are exclusively responsible for enforcing the labour legislation and regulations. ***The Committee requests the Government to indicate the number of labour inspectors and controllers (assistant inspectors) who only have to perform primary duties, as provided for in Article 3(1) of the Convention.***

*Articles 6 and 15(a). Status and conditions of service of labour inspectors and controllers such as to ensure their stability of employment and independence from changes of government and from improper external influences.* The Committee notes the findings of the 2016 audit concerning the existence of a real pay gap between staff of the labour inspectorate and staff of other government inspection departments, who receive better remuneration (such as tax inspectors or education inspectors). According to the audit, the existing career model is unlikely to increase the motivation of labour inspectors, who continue to leave the service to take up posts in the private or the semi-public sector that appear to offer better conditions of employment. The Committee notes the observations of the CLTM that the labour inspectorate continues to be subjected to undue influence by employers and the Government, thereby reducing the effectiveness of inspection activity. The Committee notes that the Government denies that it has influence over the work of the labour inspectorate. ***Noting the Government's commitment to take measures in this regard, if resources allow, the Committee encourages the Government once again to take all necessary steps to provide labour inspectors and controllers with conditions of service, including adequate remuneration, that ensure stability of employment and career prospects. The Committee requests the Government to keep it informed in this regard.***

*Articles 10, 11 and 16. Financial and material resources available to the labour inspection services and number of inspectors for the effective discharge of inspection duties.* The Committee notes the recommendations of the 2016 audit

concerning the need for a substantial, long-term increase in budget allocations for the labour administration. The audit recommends the reinforcement of transport resources and the provision of personal protective equipment for labour inspectors. The audit also recommends that the number of labour inspectors and support staff should be increased, noting that many labour inspectors and controllers will retire between 2016 and 2020 and that inspections are few in number and tend to be reactive in nature. The Committee also notes the observations of the CLTM that the lack of material and human resources prevents labour inspectors from discharging their duties effectively and that without transport facilities it is impossible for them to have access to the workplaces in remote areas for which they are responsible.

The Committee welcomes the Government's indications that ten new labour inspectors and nine new labour controllers have been appointed in the various inspection departments. The Government also refers to a project that is being negotiated to equip the inspection services with the vehicles and IT equipment needed for them to perform their duties. ***The Committee requests the Government to provide information on all follow-up measures taken in relation to the recommendations of the 2016 audit concerning financial and material resources available to the labour inspection services, including the provision of personal protective equipment. It also requests the Government to indicate the number of labour inspectors and controllers and how they are distributed within the various inspection services. It further requests the Government to provide information on the measures referred to by the Government in its report to strengthen the transport facilities needed to ensure the discharge of labour inspectors' duties, including in inspection services furthest removed from urban centres.***

*Articles 19, 20 and 21. Preparation, publication and communication to the ILO of an annual inspection report.* The Committee notes that no annual inspection report has been received. The Committee notes the findings of the 2016 audit that the labour inspection services do not have an integrated database of enterprises which keeps an inventory of inspections. It also notes the recommendation of the 2016 audit that there is a need to improve the control sheet and the system for the classification and archiving of documents, and to strengthen the ministry's capacities for the collection and analysis of statistical and administrative data. ***Noting the Government's indication that it will take the necessary measures in this respect, the Committee requests the Government once again to take the necessary steps, including with ILO technical assistance, to develop a system for the collection and compilation of data so that local inspection offices can draw up periodic reports, which can then enable the central inspection authority to draw up an annual report in conformity with the Convention.***

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

## Republic of Moldova

***Labour Inspection Convention, 1947 (No. 81)***  
(ratification: 1996)

***Labour Inspection (Agriculture) Convention, 1969 (No. 129)***  
(ratification: 1997)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations made by the National Confederation of Trade Unions of Moldova (CNSM) in its communication received on 21 August 2017.

*Article 4 of Convention No. 81 and Article 7 of Convention No. 129. Supervision and control of a central authority. Occupational safety and health.* The Committee notes that the Government indicates in its report that Law No. 131 on state control of entrepreneurial activities of 2012 withdraws some competencies and supervisory duties in the area of occupational safety and health from the State Labour Inspectorate and transfers them to ten supervision entities, including the National Agency for Food Safety, the Agency for Consumer Protection and Market Supervision, the National Agency for Public Health, the Environmental Protection Inspectorate, the National Agency for Motor Transportation, the National Agency for Energy Regulation, and the National Agency for Electronic Communications and Information Technology. These agencies will monitor occupational safety and health issues for those enterprises regulated by legislation under their purview. With respect to other areas of activity, the Agency for Technical Supervision is responsible for supervising occupational safety and health issues. The Committee also notes the information provided by the Government indicating that labour inspectors responsible for checking occupational safety and health will be appointed in sectoral agencies. These inspectors will report to their respective agencies as well as to the State Labour Inspectorate. The Government further indicates that the State Labour Inspectorate will develop procedural guidelines and checklists for inspectors as well as a platform for their training.

In this respect, the Committee notes the observations of the CNSM that the scattering of control duties in the field of occupational safety and health results in a lack of an institutional framework for the inspection of such issues.

The Committee recalls that *Article 4* of Convention No. 81 and *Article 7* of Convention No. 129 provides for the placing of the labour inspection system under the supervision and control of a central authority in so far as is compatible with the administrative practice of the Member. It recalls in this respect, that it indicated in its General Survey of 2006 on

labour inspection that should certain labour inspection responsibilities be attributed to different departments, the competent authority must take steps to ensure adequate budgetary resources and to encourage cooperation between these different departments (paragraphs 140, 141 and 152). *Recalling the importance of ensuring that organizational changes are carried out in conformity with the provisions of Conventions Nos 81 and 129, including Articles 4, 6, 9, 10, 11 and 16 of Convention No. 81 and Articles 7, 8, 11, 14, 15 and 21 of Convention No. 129 (concerning supervision and control by a central authority; stability of employment and independence; the association of duly qualified technical occupational safety and health experts and specialists; ensuring a sufficient number of inspectors to secure the effective discharge of their duties; the provision of suitably equipped local offices and transport facilities; and the undertaking of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions), the Committee urges the Government to take all necessary measures in that respect.*

*With reference to its comments on the Occupational Safety and Health Convention, 1981 (No. 155), the Committee accordingly requests the Government to provide further information on the measures taken to ensure coordination among the various sectoral authorities with respect to inspections related to occupational safety and health issues, as well as between these authorities and the State Labour Inspectorate. It requests additional information on the monitoring of enterprises not covered by the respective sectoral agencies and, in particular, of coverage of the agricultural sector. It requests the Government to provide information on: (1) the measures taken or envisaged to ensure the allocation of sufficient budgetary and human resources with a view to securing the enforcement of the legal provisions relating to occupational safety and health; and (2) the number of inspectors appointed in the sectoral bodies as well as the number of inspections undertaken by them (Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129). It requests the Government to indicate how the independence and impartiality of labour inspectors appointed in the sectoral bodies is ensured in light of their reporting to the management of the sectoral bodies (Article 6 of Convention No. 81 and Article 8 of Convention No. 129). It requests the Government to provide information on the manner in which technical occupational safety and health experts and specialists are associated in the work of inspection (Article 9 of Convention No. 81 and Article 11 of Convention No. 129), the measures taken to provide such inspectors with suitably equipped local offices as well as the transport facilities necessary for the performance of their duties (Article 11 of Convention No. 81 and Article 15 of Convention No. 129), and on the manner in which it ensures that the activities undertaken by these inspectors are reflected in the annual report on labour inspection (Articles 20 and 21 of Convention No. 81 and Articles 25–27 of Convention No. 129).*

*Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 23 and 24 of Convention No. 129. Cooperation with the justice system and adequate penalties for violations of the legal provisions enforceable by labour inspectors. The Committee previously noted the information in the Government's annual labour inspection reports that the State Labour Inspectorate drew up 891 infringement reports in 2012 for submission to court, 514 such reports in 2013 and 434 in 2014. It notes in this respect the information in the Government's report that, in 2016, labour inspectors drew up and filed 165 infringement reports. *Noting the significant decline between 2012 and 2016 in the number of infringement reports submitted to courts, the Committee once again requests the Government to provide information on the reasons for this trend. It also requests the Government to provide information on the specific outcome of the infringement reports submitted to the courts, indicating the decision rendered and if any fine or other penalty was applied.**

*Article 12 of Convention No. 81 and Article 16 of Convention No. 129. Unannounced inspection visits. The Committee previously noted that the report of the tripartite committee set up to examine the representation alleging non-observance by the Republic of Moldova of Convention No. 81 submitted under article 24 of the ILO Constitution, adopted by the Governing Body in March 2015 (GB.323/INS/11/6), found that the application of Law No. 131 to the State Labour Inspectorate (pursuant to paragraph 27 of its annex) raised issues of compatibility with Article 12 of Convention No. 81, in restricting the free access of labour inspectors to undertake inspections. In particular, the report of the tripartite committee noted that section 18(1) of Law No. 131 provides that notice of the decision to carry out a control shall be sent to the entity subject to control at least five working days prior to the carrying out of the control. Section 18(2) provides that this notice is not provided in the case of an unannounced control, and section 19 outlines the specific limited circumstances under which an unannounced control can be undertaken irrespective of the established schedule of control. In this regard, the tripartite committee's report stated that the restrictions on the undertaking of unannounced inspections contained in sections 18 and 19 of Law No. 131 were incompatible with the requirements in Article 12(1)(a) and (b) of Convention No. 81. These restrictions are similarly incompatible with the requirements of Article 16(1)(a) and (b) of Convention No. 129.*

The Committee notes the observations of the CNSM that although the Government has taken some measures to adapt the national legislation to the provisions of Article 12 of Convention No. 81, it still contains serious limitations on labour inspection activity. It notes the statement of the Government that with respect to planned controls, there is an awareness of the existing contradiction between the general rules for initiating an inspection (sections 14 and 20–23 of Law No. 131) and the provisions of Article 12. The Government indicates that this inconsistency will be removed as part of a legislative package to be adopted by Parliament, as a second phase in the reform of inspections. In particular, it indicates that it plans to provide for certain exemptions in respect of the obligation to provide prior notification five days before an inspection. *Recalling the importance of fully empowering labour inspectors to make visits without previous notice in order to guarantee effective supervision, the Committee urges the Government to pursue its efforts to amend*

**Law No. 131 to ensure that labour inspectors are empowered in line with Article 12(1)(a) and (b) of Convention No. 81 and Article 16(1)(a) and (b) of Convention No. 129 to make visits without previous notice. It requests the Government to provide detailed information on the measures taken and to provide a copy of any legislative texts adopted in this regard.**

*Articles 15(c) and 16 of Convention No. 81 and Articles 20(c) and 21 of Convention No. 129. Confidentiality concerning the fact that an inspection visit was made in response to the receipt of a complaint.* The Committee notes the information in the Government's report concerning the number of unscheduled inspections undertaken in 2015 and 2016, which indicates that such inspections were undertaken as a result of a complaint or to conduct an investigation following an accident. The Committee recalls that pursuant to Law No. 131, enterprises receive notice of inspections five days in advance for all inspections except unscheduled inspections. In this respect, the Committee recalls that in order to better guarantee confidentiality regarding any connection between a complaint and an inspection visit, it is important to ensure that a sufficient number of unannounced inspection visits are conducted independent of complaints or accidents. **The Committee requests the Government to provide information on the measures taken or envisaged to ensure that a sufficient number of unscheduled inspections are undertaken to ensure that when inspections are conducted as a result of a complaint, the fact of the complaint as well as the identity of the complainant(s) is kept confidential.**

*Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Undertaking of inspections as often as is necessary to ensure the effective application of the relevant legal provisions.* The Committee previously noted, in light of the report of the tripartite committee, that certain provisions of Law No. 131 were not compatible with the principle contained in *Article 16* of Convention No. 81. In particular, pursuant to section 14 of Law No. 131, control bodies are not entitled to perform a control of the same entity more than once in a calendar year, with the exception of unannounced inspections. Section 15 provides that each authority with supervisory functions shall develop a yearly plan for inspections which cannot be altered that indicates by quarter when an inspection is foreseen, and that it is not possible to perform an inspection not foreseen in the schedule. The Committee noted that the undertaking of inspection visits according to a schedule is not incompatible with Convention No. 81 to the extent that this schedule does not preclude the undertaking of a sufficient number of unscheduled visits, but that the particular limitations on the carrying out of unscheduled inspections contained in section 19 of Law No. 131 constituted an impediment to the carrying out of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. It further noted that the limitations contained in section 3(g) of Law No. 131, that inspections can only be carried out when other means to verify compliance with the law have been exhausted, was not in conformity with *Article 16* of Convention No. 81. The Committee subsequently noted the observations of the CNSM that Law No. 18, adopted on 4 March 2016, introduced a moratorium on, among other things, labour inspection for the period 1 April to 31 July 2016.

The Committee notes the Government's indication that the existing framework does not expressly or implicitly limit the number of inspections which can be carried out in respect of an economic agent. Section 14 of Law No. 131 states that the inspection body must plan a maximum of one inspection per year unless the applied risk-based methodology requires a higher frequency, and for unscheduled inspections there is no limit at all. In addition, any follow-up inspection concerning violations will not be considered as a separate inspection. The Committee notes in this respect the information provided by the Government that, in 2015, 4,883 scheduled inspections were undertaken and 1,317 unscheduled inspections (arising from the investigation of complaints or accidents), as well as 117 follow-up inspections. In 2016, this fell to 3,665 scheduled inspections, 610 unscheduled inspections and 42 follow-up inspections.

The Committee takes due note of the Government's explanations concerning the use of a risk-based methodology as well as the number of unscheduled inspections undertaken. However, it notes that Law No. 131 permits unscheduled inspections only under certain specific conditions: they are subject to a delegation of control signed by the head authority vested with control functions; they cannot be carried out on the basis of unverified information and information received from anonymous sources; and they cannot be conducted when there are any other direct or indirect ways to obtain the information needed (sections 7 and 19). The Committee also notes that Law No. 230 amending and supplementing certain legislative acts of 2016 further amended Law No. 141 on labour inspection to remove the possibility of undertaking inspections as often as necessary to ensure compliance with the legislative provisions concerning occupational safety and health. **Recalling with regret that it has been requesting action in this respect since 2015, the Committee urges the Government to take the necessary measures to ensure that the national legislation is amended in the near future to allow for the undertaking of labour inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, in conformity with Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Further, recalling that any moratorium placed on labour inspection is a serious violation of these Conventions, the Committee requests the Government to ensure that no further restrictions of this nature are placed on labour inspection in the future.**

*Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Prompt legal or administrative proceedings.* The Committee notes that section 4(1) of Law No. 131 provides that inspections during the first three years of the operation of a company/employer shall be of a consultative nature. The Committee notes with **concern** that section 5(4) provides that in the event of minor violations, the sanctions provided for in the Administrative Offence Law or other laws may not be applied and, moreover, that section 5(5) provides that restrictive measures may not be applied in the event of severe violations. In this regard, the Committee recalls that *Article 17* of Convention No. 81 and *Article 22* of

Convention No. 129 provides that, with certain exceptions, legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or advice instead of instituting or recommending proceedings. *The Committee requests the Government to provide information on the measures taken or envisaged to ensure that labour inspectors are able to initiate or recommend immediate legal proceedings. The Committee also requests the Government to provide information on the meaning of “restrictive measures” that are prohibited from being imposed under Law No. 131, the number and nature of severe violations detected by inspectors, the sanctions proposed by inspectors, and the penalties ultimately applied.*

#### **Issues specifically concerning labour inspection in agriculture**

*Article 9(3) of Convention No. 129. Adequate training for labour inspectors in agriculture. The Committee once again requests the Government to provide information on the training provided to labour inspectors that relates specifically to their duties in the agricultural sector, including the number of training programmes organized and the number of inspectors who participated in these programmes.*

*[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]*

## **Netherlands**

### **Labour Inspection Convention, 1947 (No. 81)** (ratification: 1951)

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 1973)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the joint observations made by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP) on Conventions Nos 81 and 129, received on 31 August 2017, reiterating that no noticeable improvements in the application of the Conventions have occurred following the recommendations in the report of the tripartite committee adopted by the Governing Body at its 322nd Session (November 2014) concerning the representation made under article 24 of the ILO Constitution relating to Conventions Nos 81 and 129 and the Occupational Safety and Health Convention, 1981 (No. 155). In this respect, the Committee notes that the trade unions emphasize that they appreciate the exchange and work with the labour inspectorate, but that the Government does not provide sufficient means to the labour inspectorate.

*Articles 3, 10 and 16 of Convention No. 81 and Articles 6, 14 and 21 of Convention No. 129. Number of labour inspectors and the frequency of labour inspections to ensure the effective discharge of inspection duties. Workload of labour inspectors. Time spent on administrative tasks.* The Committee recalls that the tripartite committee in its report requested the Government to ensure that the number and frequency of labour inspections is sufficient to ensure the effective discharge of inspection duties and compliance with the respective legal provisions in all workplaces, particularly in enterprises that are not considered to be in high-risk sectors, and in small enterprises. The tripartite committee also encouraged the Government to ensure that administrative tasks entrusted to labour inspectors do not affect the effective discharge of their primary duties, in accordance with *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129.

The Committee notes the observations made by the FNV, the CNV and the VCP that only 3.5 per cent of companies in high-risk sectors are inspected (where vulnerable categories like migrant workers are overrepresented), that the labour inspectorate is extremely understaffed and would require at least an additional 100 full-time labour inspectors as a result of having to deal with an extreme workload (due to an increase in the number of occupational accidents, the increasing scope of inspections and the increasing complexity of labour market fraud). The organizations indicate that if the capacity of the labour inspectorate is not substantially increased, there is a significant risk that workers will be exploited.

The Committee notes the information provided in the Government's report that the number of labour inspections has continued to decrease to 21,138 in 2015 and 18,910 in 2016 (continuing the decreasing trend previously noted, from 39,610 inspections in 2005 to 22,641 in 2014). In this regard, the Committee also notes the Government's indication that, since 2015, an increased focus has been placed on the social impact of labour inspection activities, with the number of inspections remaining important, but no longer being an objective in itself. The Committee also notes that the Government confirms the reiterated observations made by the FNV, the CNV and the VCP relating to an increased workload as a result of the need of labour inspectors to deal with an increasing number of legal objections and appeals from employers against the decisions and actions of the labour inspectorate. In this respect, the Committee notes the Government's reiterated indication that the inspectorate intends to reduce the time spent on administrative tasks as much as possible and that inspectors are encouraged to address inefficient work processes and administrative loads and make proposals for the improvement of the inspectorate's management.

The Committee finally notes the Government's indication that the capacity of the labour inspectorate was subject to an independent assessment carried out at the request of Parliament in 2016. The Government states that the assessment found that annual plans and multi-annual plans of the inspectorate were well developed and based on sound risk evaluations. The assessment noted that determining whether the inspectorate had sufficient capacity required further information and depended on more explicit goal setting. ***The Committee once again requests the Government to ensure a sufficient number of labour inspectors and labour inspections to achieve adequate coverage of workplaces liable to inspection for the effective discharge of inspection duties. In this respect, the Committee requests the Government to provide information on any follow-up measures taken following the assessment of the capacity of the labour inspectorate in 2016, as well as any measures taken or contemplated to facilitate labour inspectors' capacity to fulfil their duties in light of the increasing number of legal objections and appeals from employers.***

***Noting the Government's indication that it focuses on the social impact of labour inspection activities, the Committee requests the Government to provide information on the meaning of the term "social impact" in this context as well as on how such impact is measured, and requests it to continue to provide labour inspection statistics (including on the number of labour inspectors, the number of workplaces liable to inspection and the workers employed therein, the number of labour inspections, the number of violations detected and the penalties imposed, as well as the number of industrial accidents and cases of occupational disease). The Committee also once again requests the Government to specify the proportion of time spent by labour inspectors on administrative duties, in relation to the primary functions of labour inspection, and on any concrete steps taken to reduce the time spent on such tasks.***

## Pakistan

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)***

The Committee notes the observations of the Pakistan Workers' Federation (PWF), received in 2016, reiterating in detail its previous concerns that there is no effective labour inspection system in the country.

***Articles 4 and 5(b) of the Convention. Supervision by a central labour inspection authority and determination of inspection priorities in collaboration with the social partners.*** The Committee previously noted the Government's indication that the lack of coordination between the labour departments in the provinces remained a significant challenge. In this respect, it noted the envisaged institutionalization of tripartite committees in the provinces to oversee labour inspection activities.

The Committee welcomes the Government's indication, in reply to its previous request, that the provincial labour departments are now working as central authorities and that coordination is currently undertaken through bimonthly meetings of the Federal Tripartite Consultative Committee (FTCC), and that priorities for labour inspection are determined in the quarterly meetings of the Provincial Tripartite Consultative Committees (PTCC). The Committee also welcomes the Government's information that the provincial governments have been provided with material on the subject of labour inspection and explanations on the information to be provided under the Convention. In this context, the Committee notes that one of the recommendations in the 2016 national OSH profile published by the Ministry of Overseas Pakistanis and Human Resources Development and attached to the Government's report concerns the creation of independent labour inspection authorities (separate from the labour departments) at the provincial levels with sufficient human and financial resources. ***Noting the detailed minutes of the tripartite meetings of the FTCC and the PTCCs already transmitted with the Government's report under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Committee requests the Government to continue to provide information on the labour inspection issues discussed in the FTCC and the PTCCs, and the impact of these meetings on improved coordination and cooperation in the undertaking of labour inspection, under the supervision and control of a central authority. The Committee also requests the Government to provide information on whether any follow-up has been given to the recommendation in the OSH profile to provide for the creation of independent labour inspection authorities at the provincial levels.***

***Articles 10 and 16. Coverage of workplaces by labour inspections. Private auditing firms. Human resources of the labour inspection services.*** The Committee previously noted that during the discussion in the Conference Committee on the Application of Standards (CAS) in 2014, some speakers expressed concern with regard to the carrying out of third-party inspections by private auditing firms and the inadequate number of labour inspectors in the context of the 2012 factory fire in the Sindh province that resulted in the death of 300 workers. In this respect, the Committee noted in its previous comment the Government's statement that the outsourcing of responsibilities towards those firms had to change and that there were plans to regulate them. The Committee notes the Government's indication in its report that the Pakistan National Accreditation Council (PNAC) is responsible for accrediting private auditing firms, that it has accredited seven firms so far (primarily firms specializing in compliance with OSH, but also other labour issues), and that compliance assessments may for example be carried out through gap analyses against labour standards, as well as by engaging in consultations with NGOs and trade unions, on the situation in certain workplaces.

While the Committee had noted in 2016 an increase in the number of labour inspectors in three provinces, it notes with **concern** from the 2016 OSH profile submitted by the Government, that there continues to be a serious shortage of labour inspectors in relation to the number of workplaces liable to inspection. According to the OSH profile, the number

of inspectors (labour inspectors and mine inspectors) appears to be lower in each province than indicated in the Government's 2014 report. In this context, the Committee also notes the observations made by the PWF that the number of labour inspectors and the number of labour inspections are insufficient to achieve sufficient coverage of workplaces by labour inspection. The Committee would like to emphasize that while private auditing may contribute to addressing compliance gaps, such initiatives may only be complementary to, but not replace, public labour inspection. ***The Committee urges the Government to pursue its efforts to increase the number of labour inspectors, to provide information on the concrete measures taken in this respect, and to continue to provide information on the number of labour inspectors in each province. The Committee requests the Government to provide information on whether enterprises that have been subject to compliance assessments by private auditing firms continue to be liable to labour inspection in law and practice. It further requests the Government to indicate how the PNAC supervises private auditing firms, how independent compliance assessments by these firms are guaranteed, and where applicable, how the Government promotes cooperation between the labour inspection services and the private auditing firms.***

***Article 12(1). Free access of labour inspectors to workplaces.*** The Committee previously noted with concern the Government's indication that since 2001, under administrative order, a letter is issued by the Chief Inspector of Factories (Director of Labour) to a factory prior to an inspection in the province of Sindh, which contains the date and time of the visit. The Committee notes that the Government indicates that the system of prior notices was introduced to respond to the concern of employers to curb the multiplicity of inspections. The Government further indicates that the PTCC in Sindh has established a subcommittee to make recommendations on bringing the inspection regime in line with the provisions of the Convention and, at the same time, allay the concerns of employers. In this context, the Committee also notes the observations made by the PWF that labour inspections have practically been discontinued in the province of Sindh and that 2.3 million workers in that province suffer from occupational accidents every year. Having previously noted the Government's indication that labour inspectors do not generally face hindrances while carrying out inspections in the province of Punjab, the Committee also notes from the OSH profile transmitted by the Government, that restrictions in the form of prior notice appear to continue to be a problem in some areas in Punjab. ***The Committee once again requests the Government to take the necessary measures, in accordance with Article 12(1)(a) and (b), to remove the restriction in the province of Sindh in the form of the requirement of prior notice concerning inspection visits. It requests the Government to provide information on the concrete measures taken to discontinue this practice. Noting the information in the OSH profile that there appear to continue to exist issues with regard to restrictions of labour inspectors in Punjab, the Committee also requests the Government to take the necessary measures to ensure that labour inspectors in the province of Punjab are empowered to enter any workplace liable to inspection freely and without previous notice at any hour of the day or night. The Committee requests the Government to provide information on the number of inspections conducted without prior notice in each of these two provinces, including any violations detected, sanctions assessed, and corrective measures taken as a result of said inspections.***

***Articles 17 and 18. Effective enforcement and sufficiently dissuasive penalties.*** The Committee notes that the Government refers, in reply to the Committee's request to provide for adequate penalties for labour law violations in the Provinces of Sindh and Balochistan, to the increased amount of penalties in some labour laws in Sindh, including in the Sindh Factories Act, 2015 (in which fines have been increased to a maximum of 75,000 Pakistani rupees (PKR), that is, approximately US\$706 and which also provides for penalties of imprisonment with regard to certain violations). The Government also indicates that draft legislation currently before the provincial parliament in Balochistan provides for an increased level of penalties.

The Committee notes that the Government has not provided the requested statistical information on the number of violations detected, the number of violations which resulted in prosecution and the subsequent number and level of fines imposed. In this context, the Committee also notes the observations made by the PWF, according to which statistics published by the Ministry of Overseas Pakistanis and Human Resources Development show that in Sindh, only 12 penalties were imposed in 2014, although there are 8,572 factories registered in that province. The Committee also notes the observations made by the PWF that the enforcement activities of the labour inspectorate are trivial, in that no significant actions are taken concerning attempts to bribe labour inspectors, and the refusal to comply with the legal obligations to pay for medical treatment or provide financial compensation to workers who have suffered occupational accidents. ***The Committee requests the Government to provide information on the progress made with the increase of fines and other penalties in the legislation of the Province of Balochistan, and to provide information on the penalties for labour law violations provided for in the Mines Acts of the provinces. The Committee further requests the Government to provide its comments in relation to the observations made by the PWF including information on measures taken or envisaged to promote transparency in law enforcement, and once again requests the Government to provide information in relation to each of the provinces on the number of violations detected, the corresponding number of violations which resulted in prosecution, and the number and level of fines imposed.***

***Article 18. Penalties for obstructing labour inspectors in the performance of their duties.*** The Committee previously noted that during the CAS discussion in 2014, several speakers indicated that penalties for the obstruction of labour inspectors in their duties were insufficient. In this respect, it noted the Government's indication that two provinces (Punjab and Khyber Pakhtunkhwa) had revised their respective Factories Acts to establish a fine of PKR20,000 (approximately US\$195) for obstructing the work of an inspector, and that draft Factories Acts had been prepared in this

respect in the provinces of Sindh and Balochistan. The Committee also noted that under the Mines Act, 1923, a person who obstructs an inspection in a mine may be liable for imprisonment for up to three months and a fine of up to PKR1,000 (approximately US\$10).

The Committee takes due note of the Government's indication that the penalties for obstruction of labour inspectors in their duties in the Factories Act of Sindh have been raised (to up to PKR10,000 (approximately US\$95)). The Government adds that it is proposed to also increase the penalties for obstruction in the Factories Act of Balochistan (to penalties amounting up to PKR60,000 (approximately US\$570)) or imprisonment of up to one month. The Committee notes that the Government has not provided the requested information on the application of the legislative provisions relating to the obstruction of labour inspectors in practice and the measures taken in this respect. In this context, the Committee also notes the observations made by the PWF that no significant actions are taken concerning the exerting of influence to restrict or ban inspections. *Noting the legislative measures already taken, the Committee urges the Government to continue to take measures to ensure that legislation is adopted that provides for sufficiently dissuasive sanctions for the obstruction of labour inspectors in their duties with respect to premises covered by the Factories Act in Balochistan. The Committee requests the Government to provide information on the applicable penalties provided for in the Mines Acts in the provinces. The Committee also once again requests the Government to provide information on cases relating to the obstruction of labour inspectors in their duties in practice, disaggregated by province, including not only the number of prosecutions undertaken, but also their outcome and the specific penalties applied (including the amount of fines imposed).*

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

*[The Government is asked to reply in full to the present comments in 2018.]*

## Portugal

**Labour Inspection Convention, 1947 (No. 81)**  
(ratification: 1962)

**Labour Inspection (Agriculture) Convention, 1969 (No. 129)**  
(ratification: 1983)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations made by the General Confederation of Portuguese Workers – National Trade Unions (CGTP-IN) and the General Workers' Union (UGT) received with the Government's reports.

### **Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)**

The Committee notes the report of the committee set up to examine the representation alleging non-observance by Portugal of these Conventions, and the Occupational Safety and Health Convention, 1981 (No. 155), made under article 24 of the ILO Constitution by the Union of Labour Inspectors (SIT), adopted by the Governing Body at its 324th Session (June 2015).

*Article 3 of Convention No. 81 and Article 6 of Convention No. 129. Duties entrusted to labour inspectors.* The Committee notes the Government's indications, in reply to the request of the tripartite committee, on the decrease in the administrative support staff of the Working Conditions Authority (ACT), that any administrative tasks assumed by labour inspectors are only those related to their primary functions (such as entering information into the ACT database), and are not estimated to account for more than 20 per cent of the working time of labour inspectors. On the other hand, the Committee notes the observations made by the UGT that labour inspectors should not be forced to carry out ancillary tasks in the absence of sufficient support staff. The Committee observes that the Government does not provide further information concerning the allegations made by the SIT in the context of the article 24 representation that labour inspectors are assigned logistical and maintenance tasks (visiting auto repair shops, repairing facilities, transporting equipment, photocopying, etc.). *The Committee requests the Government to provide information on the measures it had indicated in the context of the representation that it would take, to rationalize resources and simplify administrative procedures. The Committee also requests the Government, in line with the tripartite committee, to provide specific information, where applicable, on the proportion of time spent by labour inspectors on logistical and maintenance tasks in relation to the primary functions of labour inspection as outlined by Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129.*

*Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Status and conditions of service of labour inspectors.* The Committee notes that the tripartite committee observed that the wages of labour inspectors were significantly lower than those of certain other types of inspectors covered by Legislative Decree No. 170/2009 (such as inspectors in the General Inspectorate for Finance) and that the strategy paper of the ACT for 2013–15 had identified the demotivation of labour inspectors in view of the lack of adequate incentives as a weakness of the ACT. *The Committee requests the Government, in line with the tripartite committee, to take measures to ensure that the remuneration levels*

*for labour inspectors is commensurate with that of other inspectors exercising similar functions. It further requests the Government, in line with the tripartite committee, to take measures to ensure that labour inspectors enjoy career prospects that take into account their merit, experience and levels of responsibility and to discuss this matter with the social partners. The Committee requests the Government to provide information on progress made on these matters.*

*Overtime.* The Committee notes that the Government, in reply to the tripartite committee's conclusions on the necessity for labour inspectors to have regular and sufficient time off work, indicates that the financial and economic crisis had led to the need for labour inspectors to carry out paid overtime, but that requests for urgent interventions have now decreased. *The Committee requests the Government to provide information on the amount of overtime currently being worked by inspectors.*

*Article 10 of Convention No. 81 and Article 14 of Convention No. 129. Sufficient number of labour inspectors.* The Committee observes that the tripartite committee noted that the strategy paper of the ACT stated that the shortage of human resources had been recognized as one of the weaknesses of the ACT; and that the tripartite committee observed that the workload of labour inspectors had increased as a result of the financial and economic crisis. The Committee also notes the observations made by the CGTP-IN and the UGT on the insufficient number of labour inspectors and other support staff which, according to the trade unions, has been significantly decreasing since 2011 as retired staff have not been replaced. In this respect, the Committee welcomes the Government's indication that the ACT is in the process of recruiting 117 labour inspectors, in addition to the 314 labour inspectors currently working at the ACT. *Recalling that the tripartite committee requested the Government to maintain a sufficient number of labour inspectors to ensure the effective exercise of inspection duties, the Committee requests the Government to provide information on the progress made with the recruitment of the labour inspectors referred to by the Government and any training or other measures taken to facilitate the rapid integration of these recruited inspectors in light of current realities and labour market developments.*

*Article 11(1)(a) of Convention No. 81 and Article 15(1)(a) of Convention No. 129. Office facilities and equipment.* The Committee notes that the tripartite committee observed from the strategy paper of the ACT that the inadequacy of the material resources had been recognized as one of the weaknesses of the ACT. The Committee also notes the observations made by the UGT concerning budgetary restrictions of the ACT. In this respect, the Committee notes the Government's reference to ongoing efforts to improve the facilities of the decentralized labour inspection offices (ten of the 32 decentralized offices have been given new facilities), which had previously been noted by the tripartite committee. The Committee also notes the Government's indication that the modernization of work equipment is a constant goal of the ACT, for which ongoing investments are being made. *The Committee requests the Government to continue to take the necessary measures to ensure that all labour inspection services at the central and decentralized levels are adapted to the needs of the service, and to provide further details on any measures taken to improve the current situation.*

*Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Adequate frequency and thoroughness of inspections to secure compliance.* The Committee observes that the tripartite committee noted a decrease in the number of workplaces covered by inspections. In this respect, the Committee notes from the statistical information provided by the Government and by the ACT on its website that the number of workplaces covered by labour inspections increased between 2013 and 2016 (from 29,539 in 2013, to 36,076 in 2016). *Welcoming the positive trend in the number of workplaces covered by labour inspections, the Committee requests the Government to continue to ensure that a sufficient number of inspections of adequate thoroughness are undertaken. In this respect, it also requests the Government to provide information on the inspection strategy pursued to achieve a satisfactory coverage of workplaces by sufficiently thorough labour inspection visits (such as inspections targeted at workplaces with a high rate of occupational accidents and diseases and any criteria and time frame for follow-up visits).*

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

## **Qatar**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)**

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017.

*Closure of the complaint under article 26 of the ILO Constitution.* The Committee recalls that the Governing Body, at its 331st Session (November 2017), commended: (i) the measures taken by the Government to effectively implement Law No. 21 of 2015 relating to the entry, exit and residence of migrant workers and to follow up on the high-level visit assessment; (ii) the official transmission of Law No. 15 on Domestic Workers and of the Law establishing Workers' Dispute Resolution Committees of 2017; and (iii) the information provided on the technical cooperation programme between the Government and the ILO (2018–20). In that respect, the Governing Body: (a) supported the agreed technical cooperation programme and its implementation modalities between the Government and the ILO; and (b) decided to close the complaint procedure under article 26 concerning non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), made by delegates to the 103rd Session (2014) of the International Labour Conference.

*Articles 8, 10 and 16 of the Convention. Sufficient number of labour inspectors and coverage of workplaces.* The Committee previously noted that while the number of labour inspectors had increased (from 200 inspectors in 2014 to 397 in 2016), along with the number of inspections undertaken, only four interpreters proficient in the most prevalent languages spoken by workers had been appointed in the Labour Inspection Department. It recalled that the strengthening of the labour inspection services should be supported by the development of an inspection strategy targeting as a priority the protection of vulnerable migrant workers against abusive practices in small companies which are subcontracted by larger companies or recruited from manpower companies.

The Committee notes the observations of the ITUC indicating that while the Government has hired additional labour inspectors in recent years, including female inspectors, the low number of interpreters remains a serious issue as it is extremely difficult to conduct a thorough inspection without an interpreter to interact with the migrant workforce. The ITUC states that inspectors who are not accompanied by an interpreter would not be able to collect evidence from workers who are unable to speak either Arabic or English.

The Committee notes the information provided by the Government in its report in response to its previous request, that, in 2016, a total of 44,540 inspection visits were conducted, in comparison with 25,575 inspection visits in 2010. The first half of 2017 saw 19,463 inspection visits (both labour inspection and occupational safety and health (OSH) inspection visits), as well as 6,080 field survey operations. The Committee takes due note that these inspections focused on small companies (with less than 20 workers), which comprised 83 per cent of labour inspection visits and 47 per cent of OSH inspections. It further notes the detailed information provided on the measures taken to monitor the disbursement of workers' wages by the Wage Protection Division. With respect to inspection staff, the Government indicates that the number of labour inspectors has remained stable since May 2016 (at 397 inspectors), although the number of female inspectors has fallen slightly (61 in 2017, compared with 69 in 2016). The Government indicates that 96 labour inspectors are able to speak English and Arabic; in addition four interpreters on staff who do not perform inspections duties are able to speak other languages spoken by migrant workers.

The Committee welcomes that the technical cooperation project signed between the Government and the ILO for 2018–20 includes the implementation of a labour inspection policy and strategy. The Government indicates that, in this framework, it aims to increase the number of interpreters accompanying inspectors in order to permit interaction with workers during inspection visits. It further indicates that the main themes of the project include, in the immediate term, measures to ensure that inspections cover all undertakings and workplaces prescribed by the Labour Law and the carrying out of random and proactive inspection visits (not based solely on complaints). ***The Committee urges the Government, in the context of its cooperation with the ILO, to make every effort to develop and implement a clear and coherent inspection strategy aimed at ensuring the protection of workers and the increased coverage of workplaces, including smaller workplaces employing vulnerable migrant workers. It further urges the Government to pursue its efforts to ensure the recruitment of labour inspectors and interpreters able to speak the languages of migrant workers, and to continue to provide information on the number of inspectors and other staff hired in this regard. It requests the Government to take the necessary measures to continue increasing the coverage of inspection visits, including through proactive visits, and to provide information on the total number of inspections undertaken, disaggregated between announced, unannounced, routine, complaint-based, accident-based and follow-up inspections.***

*Articles 5(a), 17, 18 and 21(e). Effective cooperation between the labour inspectorate and the justice system, legal proceedings and effective enforcement of adequate penalties.* The Committee previously noted that the article 26 complaint alleged that the country's labour inspection and justice system had proven inadequate in enforcing national legislation, that inspectors have little power to enforce findings and that fines are far from dissuasive and in some cases non-existent. It further noted that a report commissioned by the Government recommended bolstering the powers of labour inspectors who, upon detecting non-compliance, only have the power to draw up infringement reports. These infringement reports are then referred to the courts for further action for any sanction to be applied. While noting that non-complying undertakings can be placed on a prohibition list, meaning that they will not be granted new work permits and are prohibited from engaging in transactions with the Ministry of Labour and the Ministry of the Interior, the Committee further noted that the outcome of most inspections was no further action. The Committee also noted once again that no information had been provided on the specific penalties applied in cases where decisions had been handed down by courts.

In this respect, the Committee notes that the ITUC highlights that, according to the information provided by the Government to the Governing Body in February 2017, infringement reports were only drafted for 1.2 per cent of cases. The ITUC states that the information on labour inspection provided by the Government consistently failed to indicate whether violations have actually been addressed, workers have received remedies, or penalties have been imposed.

The Committee notes the information provided by the Government in response to its previous request, that the number of infringement reports referred to court was 859 in 2014, 676 in 2015, 1,142 in 2016, and 687 in the first half of 2017. It notes with *regret* that the Government does not provide information on the outcome of these cases, despite repeated requests from the Committee, including for information on the number of judgments rendered as a result of their referral by the labour inspectorate and any penalties (fines or imprisonment) imposed by the judiciary. While noting the information provided by the Government on the number of judgments rendered by the workers' circuit (1,436 in the first half of 2017), the Committee observes that the Government does not provide further information on the nature of the judgments or indicate if these cases include those referred to the judiciary by labour inspectors. The Committee notes,

however, the detailed information provided by the Government on the number of warnings to remedy violations issued by inspectors (8,681 in 2014, 18,979 in 2015 and 14,950 in 2016) and the number of prohibitions issued (stopping the granting of work permits and transactions with the ministries), which declined from 1,487 in 2014 to 929 in 2015 and 898 in 2016. It further takes due note of the detailed information provided on the monitoring of wage payments via the Wage Protection System including the suspension of 22,460 transactions where violations were detected in the first half of 2017 (involving 18,997 companies) and the subsequent lifting of the suspension following a remedy in 21,681 cases.

The Committee takes due note that one objective of the technical cooperation project between the Government and the ILO for 2018–20 is ensuring that the enforcement powers of labour inspectors are effective. It welcomes, in that respect, the Government's indication in its report that it is prepared to consider other powers that may be granted to labour inspectors in order to enforce the law. ***The Committee urges the Government to take immediate steps, in the context of the ongoing technical cooperation, to strengthen the effectiveness of enforcement mechanisms, including measures to provide enhanced enforcement powers to labour inspectors and further measures to promote effective collaboration with the judicial system (including with regard to the exchange of information on the outcome of cases referred to courts). In this respect, it once again urges the Government to provide the information requested on the outcome of cases referred to the judiciary by labour inspectors through infringement reports, including the penalties imposed by virtue of the Labour Law (acquittal, fines, including amounts, or prison sentences, etc.) and the legal provisions to which they relate, distinguishing these cases from those brought to court by workers themselves. It also requests the Government to continue to provide comprehensive statistics on the other enforcement activities of the labour inspectorate.***

*Articles 5(a), 9 and 13. Labour inspection in the area of OSH. OSH inspections and preventive activities of the labour inspectorate.* The Committee notes the information provided by the Government in response to its previous request that, in the first half of 2017, 8,151 OSH inspections were undertaken in 3,324 companies (compared with 14,526 inspections undertaken in 2016 in 5,144 companies, and 20,777 OSH inspections in 2015 in 4,473 undertakings). The inspections undertaken in 2017 resulted in 2,606 warnings to remedy infringements, 1,263 issuances of advice on OSH issues and 44 infringement reports. The Committee notes with *regret* that no information is provided on the follow-up given to these infringement reports. The Committee notes that the number of workers injured in occupational accidents in the first half of 2017 was 245, compared with 582 such injuries in 2016. There were 12 deaths due to occupational accidents in the first half of 2017, compared with 35 deaths in 2016, 24 such deaths in 2015 and 19 such deaths in 2014.

The Committee notes that the technical cooperation project with the ILO for 2018–20 includes enhancing the OSH system and the implementation of an OSH policy. ***Noting with concern the increasing number of fatal occupational accidents reported between 2014 and 2016, the Committee urges the Government to pursue its efforts to strengthen the capacity of labour inspection with respect to monitoring OSH. It requests the Government to continue to provide information on the preventive activities of the inspectorate and the number and type of OSH inspection visits undertaken (indicating whether they are announced, unannounced, routine, in response to a complaint or to an accident, or follow-up), the number of violations detected, the number of suspensions of workplaces or machines in the event of a serious danger to the health and safety of workers, the number of infringement reports issued and, in particular, the information previously requested concerning the follow-up given by the judicial authorities to such infringement reports.***

*OSH in the construction sector.* The Committee previously noted that the Supreme Committee for Delivery and Legacy and the Ministry of Administrative Development and Labour and Social Affairs concluded a Memorandum of Understanding (MOU) with the Building and Wood Workers' International (BWI) with the goal of protecting the occupational safety and health of workers in 2022 World Cup projects, including through the organization of joint inspection visits and the setting up of a training team specialized in OSH inspection.

The Committee notes with *interest* the information in the Government's report that the first joint field visit with the BWI was held in February 2017. The Government indicates that the MOU has had a major impact on the protection of the rights of construction workers in infrastructure projects for the World Cup. It also notes that, in 2017, the Government organized a conference on OSH in the construction sector, focusing on best practices in hazard prevention. The Committee further notes the Government's indication that 45 per cent of the occupational accidents in the first half of 2017 (110 accidents) were caused by falls and another 12 per cent by the fall of heavy objects. ***The Committee requests the Government to continue to strengthen the capacity of the labour inspectorate with respect to OSH in the construction sector and to provide information on the measures taken. It requests the Government to provide detailed statistics on the number of joint inspections undertaken under the MOU with the BWI and on their outcome.***

*[The Government is asked to reply in full to the present comments in 2018.]*

## San Marino

### **Labour Statistics Convention, 1985 (No. 160) (ratification: 1988)**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

*Legislation. The Committee requests the Government to indicate any new legal provision relating to matters covered by the Convention and international standards used in designing or revising the concepts, definitions and methods used in the collection, compilation and publication of the statistics required thereby.*

*Article 2 of the Convention. The Committee asks the Government to provide information on the application of the latest international standards and to specify, for each Article of the Convention for which the obligations were accepted (that is, Articles 7, 8, 9, 10, 11, 12, 13, 14 and 15), which standards and guidelines are followed.*

*Article 7. The Committee requests the Government to indicate the concepts, definitions and methodology used to produce the official estimates of labour force, employment and unemployment in San Marino.*

*Article 8. The Committee invites the Government to provide methodological information on the concepts and definitions relating to the register-based labour force statistics in pursuance of Article 6 of this Convention be provided to the ILO.*

*Article 9(1). Noting that the annual statistics of average earnings and hours actually worked are not yet broken down by sex, the Committee asks the Government to take necessary steps to this end and to keep the ILO informed of any future developments in this field.*

*Article 9(2). The Committee asks the Government to ensure that statistics covered by these provisions are regularly transmitted to the ILO.*

*Article 10. The Committee asks the Government to take necessary steps to give effect to this provision and to keep the ILO informed of any developments in this field.*

*Article 11. The Committee notes that no information is available on the structure of compensation of employees by major components. It therefore asks the Government whether it is possible to compile such statistics for more than four groups in manufacturing, and to communicate these to the ILO as soon as practicable, in accordance with Article 5 of this Convention.*

*The Committee also asks the Government to indicate the measures taken to produce, publish and communicate to the ILO specific methodological information on the concepts, definitions and methods adopted to compile statistics of average compensation of employees in pursuance of Article 6.*

*Article 12. The Committee invites the Government to provide the methodological information on the new consumer price indices (CPI) (base December 2002 = 100) in pursuance of Article 6 of this Convention.*

*Article 13. The Committee notes that detailed statistics on household expenditures are regularly published by the Office of Economic Planning, Data Processing and Statistics in the annual publication, *Survey on the consumption and the San Marino families life style*. However, no information is available in this publication about the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics. The Committee invites the Government to:*

- (i) indicate whether the representative organizations of employers and workers that were consulted when the concepts, definitions and methodology used were designed (in accordance with Article 3); and*
- (ii) communicate a detailed description of the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics as required under Article 6.*

*Article 14. The Committee requests the Government to provide more comprehensive information about the statistical system, with particular reference to the concepts and definitions used for statistics on occupational injuries.*

*Article 15. As no data on strike and lockout (rates of days not worked, by economic activity) were provided, the Committee invites the Government to communicate data in accordance with Article 5 of this Convention.*

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

## Ukraine

### **Labour Inspection Convention, 1947 (No. 81)** (ratification: 2004)

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 2004)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 together.

The Committee notes the observations made by the Federation of Trade Unions of Ukraine (FPU) received on 9 August 2017.

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the 2017 conclusions of the Committee on the Application of Standards (CAS) on the application of Conventions Nos 81 and 129 by Ukraine.

*Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129. Restrictions and limitations on labour inspection.* The Committee previously noted with deep concern the moratorium introduced between January and June 2015 on labour inspections. In this respect, the Committee recalls that the CAS noted that this moratorium had expired, and called upon the Government to refrain from imposing any such restrictions on labour inspection in the future.

The Committee notes that no further moratorium on labour inspection has been adopted. However, it notes with **concern** that Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and monitoring of economic activity (which applies to a number of inspection bodies, including the labour inspection services), and Ministerial Decree No. 295 of 26 April 2017 on the procedure for state control and state supervision of compliance with labour legislation (applying section 259 of the Labour Code and section 34 of the law on self-governing bodies) provide for several restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877), the frequency of labour inspections (section 5(1) of Act No. 877), and the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295).

In this context, the Committee also notes that the FPU indicates that in July 2017, Parliament passed, on its first reading, Bill No. 6489 on amendments to certain laws concerning the prevention of excessive pressure on businesses due to state supervision of compliance with labour and employment legislation, which makes the conduct of unscheduled inspection visits an administrative offence. ***In order to ensure that no such restrictions are applied, the Committee urges the Government to take the necessary measures so that Act No. 877 of 1 January 2017 and Ministerial Decree No. 295 of 26 April 2017 are brought into conformity with Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129 and to ensure that no additional restrictions are adopted. The Committee also reminds the Government that it can continue to avail itself of ILO technical assistance for this purpose.***

*Articles 4, 6, 7 and 11 of Convention No. 81 and Articles 7, 8, 9 and 15 of Convention No. 129. Organization of the labour inspection system under the supervision and control of a central authority. Partial decentralization of labour inspection functions.* The Committee notes that pursuant to Decree No. 295 of 27 April 2017, applying section 259 of the Labour Code and section 34 of the Local Government Act, labour inspection functions are now assumed by both the State Labour Service (SLS) and the local authorities (executive bodies of councils in regional urban centres and in integrated rural and semi-rural territorial communities). The Committee notes that the Government indicates that the local government authorities come under the supervision of the SLS with respect to labour inspection functions, in terms of the guidance, information and training provided by the SLS to the local authorities concerning labour inspection. Moreover, the Government indicates that the SLS may revoke the appointment of “authorized officials” in the local authorities as labour inspectors if these officials systematically fail to duly exercise their verification powers. The Government also refers to efforts to ensure coordination to avoid duplication, for example through the establishment of a joint register on the inspections undertaken by the SLS and the local authorities. In this respect, the Committee notes that section 5 of the procedure for state supervision (adopted by Decree No. 295) provides that labour inspections by the local authorities are conducted pursuant to the annual work plan of the SLS.

The Committee recalls that *Article 4* of Convention No. 81 provides for the placing of the labour inspection system under the supervision and control of a central authority in so far as is compatible with the administrative practice of the Member. The Committee recalls in this respect that it indicated in its General Survey of 2006 on labour inspection, that should certain labour inspection responsibilities be attributed to different departments, the competent authority must take steps to ensure adequate budgetary resources and to encourage cooperation between these different departments (paragraphs 140 and 152). In addition, the Committee recalls the importance of ensuring that organizational changes are carried out in conformity with the provisions of the Conventions, including *Articles 4, 6, 7 and 11* of Convention No. 81 and *Articles 7, 8, 9 and 15* of Convention No. 129. ***The Committee therefore requests the Government to provide detailed information on the allocation of adequate budgetary resources to enable the effective performance of labour inspection duties (Article 11 of Convention No. 81 and Article 15 of Convention No. 129). Relatedly, noting the guidance and training provided by the SLS to the local authorities, the Committee requests the Government to provide specific information on how the supervision by the SLS of the local authorities is ensured on a regular basis. The Committee also requests the Government to indicate how it is ensured that the “authorized officials” working as labour inspectors under the supervision of the SLS and the local authorities have the status and conditions of service guaranteeing their independence from any undue external influence (Article 6 of Convention No. 81 and Article 8 of Convention No. 129). Moreover, it requests the Government to indicate how it is ensured that “authorized officials” working as labour inspectors have the adequate qualifications and training for the effective performance of inspection duties (Article 7 of Convention No. 81 and Article 9 of Convention No. 129). In line with the 2017 requests of the CAS, the Committee requests the Government to ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections.***

*Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Material means and human resources to achieve an adequate coverage of workplaces by labour inspection.* The Committee previously noted from the 2015 needs assessment undertaken by the ILO following the request for technical assistance by the Government that increasing the number of labour inspectors and material resources (including transport facilities, registers and appropriate software) was essential for enhancing the number and quality of inspections. The Committee notes with **regret** that the Government has, once again, not provided information on any measures taken in this regard. It also notes from the information provided by the Government that there are currently 542 labour inspectors and 223 vacant labour inspection positions. ***The Committee therefore once again requests that the Government provide information on the***

*measures taken to improve the budgetary situation of the SLS, and improve the material means and human resources of the services throughout its structures. In this respect, the Committee requests the Government to continue to provide information on the number of labour inspectors working at the central and local levels of the SLS and their material resources (offices, office equipment and supplies, transport facilities and reimbursement of travel expenses), and to take measures to ensure that the number of inspectors and level of resources are appropriate for the effective performance of their duties.*

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

*[The Government is asked to reply in full to the present comments in 2018.]*

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 81** (Albania, Bahrain, Bangladesh, Benin, Burkina Faso, Djibouti, France: New Caledonia, Germany, Guatemala, India, Japan, Mauritania, Netherlands, Pakistan, Portugal, Qatar, Sweden, Togo, Ukraine); **Convention No. 85** (United Republic of Tanzania: Zanzibar); **Convention No. 129** (Albania, Burkina Faso, France: New Caledonia, Germany, Guatemala, Netherlands, Portugal, Sweden, Togo, Ukraine); **Convention No. 150** (Togo); **Convention No. 160** (Cyprus, Greece, Kyrgyzstan, Republic of Moldova).

## Employment policy and promotion

### Algeria

#### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

*Articles 1 and 3 of the Convention. Implementation of an active employment policy. Participation of the social partners.* In reply to the Committee's previous comments, the Government indicates in its report that the survey conducted in September 2016 by the National Statistics Office (ONS) reveals a national unemployment rate of 10.5 per cent. The Committee notes that the unemployment rate remains much higher for women (20 per cent) than for men (8.1 per cent) and also that it rose by 3.5 percentage points in 2016–17. The Committee notes that the Government, through support for the establishment of micro-enterprises, funded 20,164 projects in 2016, compared with 59,679 in 2014. The youth unemployment rate (16–24 years of age) stood at 26.7 per cent in April 2016, a decrease of 3.2 percentage points compared with the previous year. The Committee notes the Government's indication that, for the 2015–19 period, its efforts are focusing on the promotion of waged employment and the creation of employment for young persons and unemployed persons. The creation of employment will be ensured by the simplification of legislative and regulatory procedures to facilitate access to bank credit and the strengthening of support for promoters to ensure the viability of micro-enterprises. As regards the role of the social partners, the Government indicates that tripartite meetings with union representatives of the employers and representatives of the General Union of Algerian Workers have been organized. The aim of these meetings is to adopt a consensus-based development project and identify adjustments that are needed to implemented policies. **The Committee requests the Government to continue sending information on the adoption and implementation of employment measures and on their impact in terms of possibilities for full, productive and lasting employment. It also requests the Government to provide up-to-date statistical information on the nature, extent and trends of employment and unemployment in all sectors, including in the rural sector. The Committee further requests the Government to provide detailed information on the contribution of the social partners to the preparation of a new employment action plan, indicating the manner in which account has been taken of the opinions of workers in the rural sector and in the informal economy, with a view to securing their active cooperation in formulating employment policies and enlisting support for the measures taken in this respect.**

### Angola

#### **Employment Service Convention, 1948 (No. 88) (ratification: 1976)**

The Committee notes the observations of the National Union of Angolan Workers–Trade Union Confederation (UNTA–CS), received on 12 December 2016, on the persistence of violations of the Convention in practice. **The Committee requests the Government to provide its comments in this regard.**

*Article 1 of the Convention. Contribution of the employment service to employment promotion. Application in practice.* In its previous comments, the Committee asked the Government to provide a report containing the available statistical data. The Committee notes that the Government has not provided any information in this respect. **The Committee once again requests the Government to provide a report containing the available statistical information on the number of public employment offices established, the number of applications for employment received, vacancies notified and persons placed in employment by such offices.**

*Articles 4 and 5. Cooperation with the social partners.* The Committee notes that the Advisory Committee for Employment, established by Decree No. 5 of 7 April 1995, is a tripartite advisory body that works in cooperation with the Ministry of Public Administration, Labour and Social Security (MAPTSS), through the National Institute of Employment and Vocational Training (INEFOP). It also notes that the inter-ministerial committee for the training of human resources for the national economy, a ministerial body responsible for the formulation of the comprehensive employment and vocational training policy, created by Decree No. 51 of 17 August 2001, is composed of representatives of various ministries, workers' and employers' representatives and, at the invitation of the Vice-Chairperson, any other member of civil society. **The Committee requests the Government to provide information on the manner in which it is ensured that the social partners can actively participate in the development and implementation of the employment service policy, as well as information on the structuring, functioning and objectives of the various committees, the cooperation established between them and the impact of their policies.**

*Article 6. Organization of the employment service.* The Government indicates that the national employment system consists of central services and 18 vocational services located throughout the country that include employment centres, integrated employment centres and vocational training centres. The Government adds that a network has been established of 36 employment centres, 11 of which are integrated centres, in 18 provinces. This network is supplemented by training and vocational rehabilitation mechanisms, as well as by various activities carried out by public and private training centres and private employment agencies. **The Committee requests the Government to provide detailed information on the functioning of these centres and the activities undertaken to ensure the effective performance of the**

**functions listed in the Convention. It also requests the Government to continue providing information on the number of employment centres, integrated employment centres and vocational training centres.**

*Article 7(b). Public service action for persons with disabilities and other groups in a vulnerable situation.* The Government indicates that article 23(1) of the Constitution of 2010 provides for equality before the law, that recruitment in employment centres is not conducted on the basis of special categories and that their services are available to all jobseekers, without any distinction. Moreover, the Committee notes the observations of the UNTA–CS, indicating that although, in recent years, several women have been appointed to senior executive and legislative positions, a large proportion of women continue to face blatant gender discrimination in employment, particularly during pregnancy, that women continue to work in poorly paid jobs in the informal economy and the domestic sector, and that they are often victims of sexual and psychological harassment in the workplace. The Committee recalls that Article 5 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), establishes that special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination. Moreover, the Committee recalls that the public employment service should take measures to develop special arrangements for the placement of minors, persons with disabilities and women (see Paragraph 4(b) and (c) of the Employment Service Recommendation, 1948 (No. 83)). **The Committee requests the Government to provide information on the measures taken to give effect in practice to Article 7(b) of the Convention, and particularly on the special measures of protection or assistance in the employment service that are available to persons with disabilities and other groups in a vulnerable situation, particularly women.**

*Article 8. Measures to assist young persons.* The Committee notes the integration and training programmes for young persons who are in a situation of vulnerability due to unemployment, inaptitude, socio-economic situation and low level of education. It also notes that, for young entrepreneurs, the Government has created enterprise incubator programmes, credit programmes and programmes to promote self-employment, independent work and micro-enterprises in the informal economy. The Committee further notes that the Government has created employment programmes for other groups in a vulnerable situation, such as women, young persons with a low level of education who are seeking their first job, recent young graduates, demobilized soldiers, young persons living in the streets and young persons living in remote areas. Lastly, the Committee notes the observations of the UNTA–CS, indicating that young persons without any work experience have difficulty securing their first job, that there have been cases of nepotism and corruption in the recruitment of public employees, and that in the private sector certain enterprises select candidates on the basis of their family name and social origin. **Taking due note of the various types of training and integration programmes implemented by the Government to assist young persons, the Committee requests the Government to provide up-to-date statistical data on the number of young persons who have participated in these integration and training programmes, as well as relevant data on the impact of such programmes in securing lasting employment.**

*Article 9(4). Proposed measures to provide training or further training for employment service staff.* The Government indicates that workers in the employment service are public employees governed by Decree No. 33 of 26 July 1991 on the disciplinary rules governing public and administrative officials. These workers are recruited on the basis of a competition, as well as the needs of the MAPTSS. In this respect, the Committee notes that these employees receive training in accordance with the needs of the state administration services, the business sector and other private entities. **The Committee requests the Government to provide information on the manner in which it is ensured that employment service staff have the necessary skills to carry out the duties set forth in the Convention and have been adequately trained for the performance of their duties, especially for their activities concerning disadvantaged groups.**

*Article 10. Measures to encourage full use of employment service facilities.* The Government indicates that it is promoting, in collaboration with the social partners, various vocational training programmes through advertisements in several communication media, such as official government websites, and in vocational training centres, schools and universities. **The Committee requests the Government to provide information on the manner in which it ensures the participation of the social partners in this process and the results.**

*Article 11. Cooperation between the public employment service and private employment agencies.* The Government indicates that Angolan legislation allows the coexistence of, and collaboration between, the public employment service and private agencies, which facilitates the joint creation of vocational orientation and vocational training programmes. With respect to private employment agencies, the Committee notes that they may register, select and place jobseekers. However, they are obliged to: provide monthly statistical data on applications for employment, offers of employment and placements to the employment centre in their area of jurisdiction; cooperate with public employment centres; and participate in meetings organized by the public employment services. **The Committee requests the Government to indicate the specific measures that have been taken to guarantee effective cooperation between the public employment service and private employment agencies, and to provide statistical data on private employment agencies.**

## Australia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) received on 4 October 2017. ***The Government is requested to provide its comments in this regard.***

*Articles 1 and 2 of the Convention. Employment trends and active labour market measures.* The Government indicates that labour market conditions have improved over the past three years to May 2017. The number of persons in employment increased to 12,152,600 in May 2017 and the unemployment rate declined from 5.9 per cent in May 2014 to 5.5 per cent in May 2017. Although the participation rate increased to 64.9 per cent over the reporting period, up to May 2017, groups in situations of vulnerability, including the long-term unemployed, youth, the mature aged, persons with disabilities and indigenous Australians, continue to be disadvantaged in the labour market. The Committee notes that the Government is committed to promote workforce participation and to provide additional support to specific groups, with a particular focus on disadvantaged parents of young children, indigenous Australians and older people. The Committee notes that the range of targeted assistance has increased since the last report, with the introduction of the Transition to Work and ParentsNext. ParentsNext, which became operational in April 2016, is a pre-employment programme assisting parents belonging to specific groups in preparing for employment, including indigenous Australians, women, youth and culturally and linguistically diverse Australians. The Committee also notes a structural change in the employment market over the past 25 years. Given that the share of employment in the services industries has risen, the Government is seeking to reskill retrenched workers to take up opportunities in industries that are experiencing growth through, for example, the Growth Fund initiative. The Committee also notes a rise in part-time employment over the past three years, which coincides with increased underemployment. In its observations, the ACTU indicates that underemployment is at a record high and reiterates that precarious work is one of the most pressing issues in the labour context, with 40 per cent of all workers working under non-standard work arrangements. While the ACTU recognizes that these forms of employment have their legitimate purposes, it maintains that these arrangements are increasingly being used to avoid the responsibilities associated with a permanent ongoing employment relationship. The ACTU refers to its 2012 Independent Inquiry into Insecure Work which includes recommendations directed at improving the level of permanent employment among the Australian workforce. ***The Committee requests the Government to specify how it keeps under review, coordinates and adapts the measures and policies adopted according to the results achieved in pursuit of the objectives of full, productive and freely chosen employment. The Committee also requests the Government to include information on the results of the measures taken to address long-term unemployment, underemployment and precarious work, including information on the number of programme beneficiaries obtaining lasting employment.***

*Youth employment.* The Committee notes that youth unemployment fell from 13.6 per cent in 2014 to 12.7 per cent in 2017 and that youth employment increased by 3.6 per cent over the three years prior to May 2017. However, the Committee notes that young people continue to experience disadvantage in the labour market and that the underemployment rate for young persons has increased from 15.8 per cent in May 2014 to 18.5 per cent in May 2017. The ACTU observes that the youth underemployment rate is approximately three times that of the rest of the workforce. The Committee takes note of a series of measures, enacted in the context of the Youth Employment Strategy since 2015, to assist young people at risk of long-term unemployment and welfare reliance. The Government indicates that the Empowering YOUth Initiatives support innovative approaches from not-for-profit and non-governmental organizations to help unemployed young people, while the Transition to Work service provides intensive, pre-employment assistance to improve the work readiness of young people who have disengaged from work and study. Furthermore, ParentsNext assists, inter alia, young parents to prepare for employment. Among these projects, the Committee notes with *interest* the initiatives taken under the Government's Youth Employment Strategy, targeting the improvement of employment outcomes for young people with mental illness. The Committee notes that Youth Jobs PaTH provides training and voluntary work experience placement through PaTH internships and wage subsidies. It also notes, however, that the ACTU expresses concern that PaTH internships replace real, entry-level jobs and carry with them a risk of exploitation for vulnerable young jobseekers, indicating that participants are not given the legal protections to which employees are typically entitled, since they are paid significantly below the minimum wage, are not provided meaningful qualifications and are not granted legal protections to which employees are typically entitled. The Encouraging Entrepreneurship and Self-Employment initiative aims to expand government services for young unemployed who wish to start their own business and includes an expansion of the New Enterprise Incentive Scheme. The Government is also funding Community Development Programme (CDP) providers to implement youth engagement strategies to help engage young people in remote Australia. The Growing Jobs and Small Business Package is aimed at providing targeted support for young people who are more susceptible to long-term unemployment. The Queensland Government has implemented a number of programmes to reduce youth unemployment, including the Back to Work Regional Employment Package and Skilling Queenslanders for Work programme, the Back to Work South East Queensland Employment Package and the Employment Skills Development Program. With regard to Western Australia, the annual Western Australia State Training Plans focus on youth training aimed at connecting young people's competencies with industry needs. ***The Committee requests the Government to provide detailed information, including statistical data disaggregated by sex and age, on the impact of the measures taken to encourage and support employment levels of young people and reduce youth***

*unemployment. The Committee requests the Government to provide detailed information, including statistical data disaggregated by sex and age, on the numbers of young persons participating in each of the abovementioned programmes, and on the impact of each of these programmes on the employment rate among young persons.*

## Cameroon

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

*Article 1 of the Convention. Implementation of an active employment policy.* In its previous comments, the Committee requested the Government to provide information on the formulation and implementation of an active employment policy and to indicate the specific measures taken to create productive employment and reduce precarity in employment in the country. The Government reports that the National Employment Policy is still being finalized and is therefore not yet in effect. It adds that the National Action Plan for Youth Employment (PANEJ) 2016–20 and the Growth and Employment Strategy Paper (DSCE) nevertheless remain important documents for the promotion of employment in Cameroon. The Government adds that it has made employment a central priority of its development policy and one of the three strategic priorities of the DSCE. The Government adds that in Cameroon there is a close link between the objective of full employment and the economic and social development objectives set out in the DSCE and in the vision of the emergence of Cameroon by 2035. *The Committee hopes that the Government will adopt the national employment policy in the near future. It requests the Government to keep it informed of any developments in the formulation and implementation of this policy, and to provide a copy once it has been adopted. The Committee also requests the Government to provide more detailed information on the specific measures implemented to create productive employment and reduce precarity in employment.*

*Article 1(3). Coordination of education and training policy with employment policy.* The Government indicates that it has observed difficulties related to a lack of adaptation between employment and training. In order to remedy this, it is promoting vocational training and the establishment of centres of excellence for vocational training throughout the national territory, through a partnership with the Republic of Korea. *The Committee requests the Government to provide more detailed information on the impact of the measures taken or envisaged to resolve the difficulties related to the coordination of education and training policy with employment policy, particularly in terms of the long-term integration into the labour market of the most disadvantaged categories of workers. In this respect, it once again requests the Government to provide information on the manner in which the participation of employers' and workers' organizations is ensured in practice.*

*Informal economy.* The Government reports the implementation in 2005 of an integrated support project for the informal economy funded by resources from the Heavily Indebted Poor Countries (HIPC) Initiative. It adds that these resources, valued at 9 billion CFA francs, have made it possible to establish the Support Fund for Actors of the Informal Sector (FAASI). *The Committee requests the Government to provide more detailed information on the activities of the FAASI, in terms of identifying its participation on creating productive employment or training for workers from the informal economy and of the application of the principles of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).*

*Article 2. Collection and use of employment data.* The Government indicates that the National Employment and Vocational Training Observatory (ONEFOP) and the National Tourist Office (ONT) are working in collaboration with the National Statistics Institute (INS) to compile and publish data on unemployment in Cameroon. It adds that it will provide information to the Committee on the employment situation and on the level and trends of employment, unemployment and underemployment for 2016, as soon as it is available. *The Committee once again requests the Government to specify the active employment policy measures adopted as a result of the establishment of the various structures responsible for collecting information on employment. The Committee hopes that the Government will soon be in a position to provide up-to-date statistics on the employment situation and on trends in employment, unemployment and underemployment, particularly with respect to women and young people. The Committee recalls that the Government can avail itself of the technical assistance of the Office in this regard.*

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government indicates that within the framework of the implementation of the employment policy, all categories of society are consulted through various bodies such as the National Labour Advisory Board, the National Social Dialogue Follow-Up Committee and other bodies involved in the various economic activities. It also reports the organization and holding of workshops and forums in order to gather recommendations which could be integrated into employment programmes in Cameroon. *The Committee requests the Government to continue providing information on the manner in which the social partners participate in the formulation and implementation of the national employment and vocational training policy. The Committee once again requests the Government to provide detailed information on the manner in which the representatives of rural workers and workers in the informal economy participate in the formulation of employment policies and programmes.*

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

## China

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1997)**

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* The Committee welcomes the detailed information provided by the Government in its report, in which it indicates that it places a priority on the employment stabilization and expansion for economic and social development and to improve livelihoods and alleviate poverty. In this regard, the Government aims to strengthen the links between macroeconomic and employment policies, with a view to supporting economic development through employment transformation. The Committee notes that China's 13th Five-Year Plan (2016–20) on Promoting Employment, launched in 2017, sets out the Government's principal objectives in relation to employment promotion. These objectives are also reflected in additional documents provided by the Government, such as in the 2017 report "Opinions on Facilitating Employment and Entrepreneurship Currently and in the Future" (the 2017 Opinions report). The Committee notes that the stated objectives include enhancing economic development to create jobs while preventing unemployment, particularly for targeted groups such as young persons, women, migrant workers, persons with disabilities, rural workers and laid-off workers. The Government refers to its policies on employment assistance, stating that, from 2014 to June 2017, it provided employment services to 6,080,000 jobseekers. The Government is also focusing on promoting equitable cross-regional development and employment services in both urban and rural areas. The Committee notes, however, that the Government has not provided information on specific measures taken, nor has it provided statistical data enabling the Committee to examine the effectiveness and impact of the active labour market measures implemented. ***The Committee therefore reiterates its request that the Government provide detailed information, including statistical information, disaggregated by sex, age and economic sector and region, on active employment policies and other measures taken during the reporting period, and on their impact in terms of promoting full, productive, freely chosen and sustainable employment opportunities, as contemplated in Article 1 of the Convention. The Committee further requests the Government to indicate how the employment policy objectives contained in the Five-Year Plan (2016–20) on Promoting Employment are related to other economic and social objectives. The Committee requests the Government to indicate the manner in which it is ensured that employment policy measures are kept under periodic review within the framework of a coordinated economic and social policy.***

*Article 2. Employment trends. Labour market information.* The Government indicates that, in 2014–16, 39.48 per cent of persons were employed in urban areas, and the registered unemployment rate in urban areas was 4.05 per cent during this period. The Committee notes the Government's indication that it aims to improve its labour market information system and gradually integrate gender and other indicators. The Committee recalls that the Government has established a system for compiling and analysing information on job supply and demand in more than 100 representative cities on a quarterly basis. This information is used as a basis for adjusting employment policies as needed. The Government also periodically disseminates this information through internet, the public employment service and the media to provide guidance for jobseekers and employers. ***The Committee requests the Government to provide updated statistics concerning the size and distribution of the labour force, the type and extent of employment, unemployment and underemployment and trends both in urban and rural areas. It also requests the Government to provide information on measures taken or envisaged to improve the labour market information system, particularly with regard to the inclusion of indicators that capture additional factors, such as new or non-standard forms of employment and job creation through entrepreneurship development. The Committee also requests the Government to provide updated information on the manner in which the labour market information obtained is used in the formulation, evaluation, modification and implementation of active labour market measures.***

*Employment of young persons.* The Government places a priority on the employment of college graduates in all regions through a range of activities, including entrepreneurship and training guidance, thereby, encouraging graduates to launch small and micro-enterprises. In 2014–16, 1,651,000 college graduates started up their own businesses. ***The Committee requests the Government to provide detailed information, including updated statistical information disaggregated by age, sex and region, on the type and impact of labour market measures aimed at meeting the employment needs of young persons, especially college graduates. The Committee also requests the Government to indicate the measures enacted or envisaged to facilitate the transition of young persons from school to work.***

*Employment of women.* The Government stresses that one of its primary objectives is to promote fair employment for women, offering targeted employment services and standardizing recruitment processes to prevent sexual discrimination and protect women's right to equality of opportunity and treatment. The Committee refers to its 2016 comments concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it noted the different statutory retirement age provisions for men and women. In addition, referring to the ILO publication *Women in the labour market in China (2015)*, the Committee noted that the labour force participation rate of women decreased between 1990 and 2013, falling from 72.7 to 63.9 per cent, and that the gap between men and women in this regard widened from 12.1 per cent in 1990 to 14.4 per cent in 2013. The ILO publication took note of decreased institutional support provided to workers with family responsibilities for childcare, and observed that sectoral and occupational segregation persists. ***The Committee requests the Government to provide information, including updated statistical information, on the impact of labour market measures taken to increase the labour force participation rate of women***

*and address both vertical and horizontal occupational segregation, including information disaggregated by region and occupation. The Committee also requests the Government to indicate any measures taken or envisaged to expand the provision of institutional childcare with a view to encouraging women's participation in the labour market, as well as to indicate the measures taken to establish the same statutory retirement age for women and men.*

*Employment of migrant workers.* The Government indicates that as of 2016 there were 281.71 million migrant workers, including rural migrant workers, in the country. The Committee notes that, according to the 2015 Opinions on Further Improving the Employment and Entrepreneurship in the New Situation, the Government aims to enhance the vocational skills of migrant workers. *The Committee requests the Government to provide information, including updated statistical information, on the measures taken or envisaged to meet the employment needs of migrant workers, including internal rural migrants.*

*Employment of rural workers.* The Committee notes that the Government is undertaking to enhance employment services and vocational skills training to promote rural employment and eradicate poverty in poorer rural areas of the country. The Government is also encouraging those returning to rural areas to start their own business. The Committee notes the “hukou reform”, which aims to promote the employment of migrant workers in rural areas. *The Committee requests the Government to provide information on the impact of the measures taken to promote the employment of rural workers, including updated statistical data on the employment situation and trends. The Committee also requests the Government to provide more information on the status of the “hukou reform” and its impact on regional disparities.*

*Persons with disabilities.* In its 2016 direct request concerning the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Committee noted that two out of three persons with disabilities in China live in rural areas, and that a considerable percentage of these persons are living in poverty. In addition, the Committee notes the ILO report on the Inclusion of People with Disabilities in China, which notes that 36 per cent of persons with disabilities aged 15 or older in China are illiterate. The Government refers to employment services tailored to the needs of persons with disabilities, indicating that it seeks to ensure respect of the rights of persons with disabilities in the workplace. It provides employment assistance to persons with disabilities, helping them to access jobs by providing subsidies to employers. *The Committee requests the Government to provide updated detailed information on the nature and impact of active employment measures taken to promote the employment of persons with mental and physical disabilities, particularly on the open labour market.*

*Strengthening employment services.* The Government reports on measures taken to improve the quality and effectiveness of public employment services, especially for college graduates and rural workers. The Government indicates that, from 2014 to 2016, a total of 9,821,000 employers were registered with the public employment service, who employed a total of 167,184,000 registered jobseekers. Furthermore, there were 124,427,000 registered jobseekers, 51,949,000 people were offered vocational guidance and 11,852,000 people were offered entrepreneurship-related services. *The Committee requests the Government to continue providing information on the operation of public employment services and private employment agencies and the measures taken to improve the public employment services and ensure cooperation between the public employment service and private employment agencies.*

*Development of small and medium-sized enterprises, entrepreneurship and new forms of employment for job creation.* The Committee notes the Government's indication that small and micro-enterprises (SMEs) constitute a principal source of employment and that the promotion of SMEs is therefore one of the main objectives set out in the 2017 Opinions report. The Committee notes that the Government introduced a series of measures supporting the development of small and micro-enterprises, inter alia, through providing subsidies and other financial support, establishing an entrepreneurship model, and providing more advantageous tax policies to encourage business development. The Government indicates that, by the end of 2015, there were more than 20 million small and micro-enterprises and more than 54 million private businesses, with 80 per cent of urban jobs provided by SMEs. In 2016, there were 15,000 new enterprises being established in China every day, an increase of 3,000 new enterprises a day compared with 2015. The Committee notes that the Government also encourages the creation of jobs through promoting entrepreneurship and entrepreneurship services, especially for returning migrant workers, and non-standard forms of employment. *The Committee requests the Government to continue to provide information on the impact of the measures taken to generate employment through the promotion of small and micro-enterprises, entrepreneurship and new forms of employment. It also requests the Government to provide information on the creation of new forms of employment, including information on whether these new or non-standard forms of employment are considered to fall within the informal economy.*

*Vocational education and training.* The Committee notes the Government's indication that it is undertaking measures to strengthen vocational education and training services available to jobseekers. The Committee notes that, by the end of 2016, national human resources service agencies provided 280,000 training classes. *The Committee requests the Government to provide detailed information on the impact of education and training measures implemented on employment opportunities and on consultations held with the social partners in the development of education and training programmes that meet the needs of the labour market. It also reiterates its request that the Government transmit information on the manner in which coordination is ensured between human resource development policies and active labour market measures developed and implemented.*

*Article 3. Consultation with the social partners. The Committee requests the Government to provide information on the nature and extent of the involvement of the social partners in the formulation and implementation of active employment policy measures and programmes. It also requests the Government to indicate to what extent consultations have been held with the representatives of the persons affected by the measures taken, such as women, young people, persons with disabilities, rural and migrant workers.*

## Comoros

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1978)**

The Committee notes the observations made by the Workers Confederation of Comoros (CTC), received on 1 August 2017. *It requests the Government to provide its comments on the matter.*

*Article 1 of the Convention. Implementation of an active employment policy. Youth employment.* In its previous comments, the Committee requested the Government to indicate in its next report whether the Act issuing the national employment policy had been adopted and to indicate whether specific difficulties had been encountered in achieving the objectives set out in the national Poverty Reduction and Growth Strategy Paper (PRGSP). The Committee notes with **interest** that the national employment policy act (PNE) was adopted through the promulgation on 3 July 2014 of Decree No. 14-11/PR enacting Framework Act No. 14-020/AU of 21 May 2014 issuing the national employment policy. The Government indicates that this Act aims to provide a common and coherent vision of the strategic approaches for taking national action on employment, by increasing opportunities for low-income population groups to access decent work and a stable and sustainable income. The Government adds that in November 2014, with ILO support, it developed and adopted the Emergency Plan for Youth Employment (PUREJ), which is part of the process to implement the PNE. The PUREJ involves the adoption of programmes to promote youth employment which result from priority measures identified in the strategic framework of the PNE and integrated in the Strategy for Accelerated Growth and Sustainable Development (SCA2D). The Government adds that the overall objective of the PUREJ is to ensure strong employment growth in the short and medium term. In this context, the PUREJ focuses mainly on the promotion of youth employment in job-creating sectors for a period of two years, in order to contribute to the diversification of the economy, the production of goods and services and the building of social peace. The Government points out that the objective was to create 5,000 new decent and productive jobs for young persons and women by the end of 2016, through the development of skills in line with the needs of priority sectors of the Comorian economy and support for the promotion of employment and vocational integration. The Committee notes that in May 2015 the Government signed, together with the constituents and the ILO, the second-generation Decent Work Country Programme (DWCP), of which the main priority is to ensure the promotion and governance of employment. The Committee notes the observations of the CTC which indicate that the implementation of the PNE is not effective. It points out that the vocational training component, which is being conducted through a project with the European Union, is the only one being applied. In this regard, the provisions and mechanisms of the PNE have not been implemented and the text has not been disseminated to the public. The CTC also reports the dismissal of over 5,000 young persons without compensation. *The Committee once again requests the Government to indicate whether specific difficulties have been encountered in achieving the objectives set out in the PRGSP. It requests the Government to provide more detailed information on the measures taken with a view to achieving the employment priorities established in the framework of the DWCP 2015–19, and on the impact of measures and programmes such as the PUREJ, which are aimed at increasing access to decent work for young persons. In this regard, the Committee requests the Government to indicate the number of young persons who have benefited from these programmes.*

*Article 2. Collection and use of employment data. The Committee once again requests the Government to provide detailed information on the progress made with the collection of data on the labour market, and on the manner in which this data is taken into consideration during the formulation and implementation of the employment policy. It reminds the Government that it may avail itself of ILO technical assistance if it so wishes.*

*Article 3. Participation of the social partners. The Committee once again requests the Government to include full information on the consultations envisaged in Article 3 of the Convention, which requires the participation of all of the persons affected, and particularly employers' and workers' representatives, in the formulation and implementation of employment policies. The Committee hopes that the Government will make every effort to take the necessary measures without delay.*

## Czech Republic

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1993)**

*Articles 1 and 2 of the Convention. Employment policy measures.* The Committee notes that, since 2014, the situation in the labour market has been steadily improving. In 2013, the Government approved the 2014–20 Regional Development Strategy as an instrument for coordinating public policies with an impact on regional development, including the national employment policy (NEP). In light of the aim of the Ministry of Labour and Social Affairs (MoLSA) to remove some persistent structural mismatches in the labour market, an analysis of supply and demand in the labour market was prepared and approved by the Government in 2016. The analysis included a set of measures to

eliminate disproportions in the Czech labour market aimed, inter alia, at increasing the motivation of the workforce to enter employment. The Government indicates several Labour Law amendments implemented in 2015, 2016 and 2017. The Committee notes with *interest* a series of amendments aimed at promoting the employment of persons with disabilities, disadvantaged people or people at risk in the labour market through projects implemented, inter alia, by the Fund for Further Education. The Committee also notes that an active employment policy instrument was introduced in the form of a contribution while working under short-time working schemes (the so-called “kurzarbeit”) and that in 2017, there were adjustments in the field of employment facilitation by employment agencies programmes. Furthermore, in 2015, the Government introduced an attractive investment environment in the Czech Republic providing investment incentives to investors for the creation of new jobs and retraining or training of employees. The Government indicates that funds from the European Social Fund have been allocated to projects aiming to increase employment and employability of the workforce. Several projects implemented within the framework of the Operational Programme Human Resources and Employment (OP HRE) for the 2007–13 programming period were completed in 2015 and the final evaluation reports were approved in 2016. The OP HRE focused on reducing unemployment through an active job market policy and provision of professional training, promoting employment and workforce adaptability and mobility, integrating young people, socially excluded and disadvantaged people into the labour market, promoting gender equality in all aspects of employment, improving the quality of education and vocational training, and improving the quality of public administration and international cooperation in the mentioned areas. The implementation of projects under the Operational Programme Employment (OPE) for the 2014–20 programming period is gradually gaining momentum. In 2016, 6,866,805,000 Czech Republic koruna (CZK) was spent on the active employment policy (AEP) and 74,289 persons (job seekers, employees and self-employed persons) were supported. The most used instruments were socially beneficial jobs, retraining and community service. To assess the impact of the AEP measures and establish an ongoing monitoring system to gauge their effectiveness, the MoLSA has initiated the project “Evaluating the Efficiency and Effectiveness of the AEP Implementation”. ***The Committee requests the Government to provide updated information on the impact and effectiveness of the AEP measures implemented on increasing employment and reducing unemployment, and specifically on the impact of the projects implemented under the OPE for 2014–20. The Committee also requests the Government to provide information on the evaluation of the AEP implementation.***

*Employment trends.* The Committee takes note of the detailed labour market statistics provided by the Government for 2014–17. Following positive growth in economic development in 2014 and 2015, GDP growth dropped to 2.4 per cent in 2016, a slowdown related, inter alia, to a mismatch between supply and demand in the labour market due to the large increase in the number of reported job vacancies and the significant drop in the number of jobseekers. Between 2014 and 2016, there was an absolute increase in employment, due to growth in the tertiary and secondary education sectors. Employment growth accelerated to 1.9 per cent in 2016. The employment rate reached 58.2 per cent in the second quarter of 2017 according to the data provided by the Czech Statistical Office. Moreover, the general unemployment rate was 3 per cent in 2017. The increase in employment was mainly due to the increased participation of women. In 2016, the share of men in the labour force fell to 56 per cent, and the share of women increased to 44 per cent. The Committee notes with *interest* the decline in unemployment among groups of people who are at a disadvantage, including due to health status, age, lack of experience or insufficient education. With respect to young persons under 25, according to the ILOSTAT database, in 2016 the youth labour force participation rate was 32 per cent. However, the proportion of people aged 50 and above, people with disabilities or people with the lowest levels of education is increasing among the unemployed. ***The Committee requests the Government to continue to provide statistical data concerning the size and distribution of the labour force, the nature and extent of employment, unemployment and underemployment.***

*Education and training policies and programmes.* The Government indicates that the amended Education Act aims to improve cooperation between secondary vocational schools and employers to prepare students for the transition to work. In this context, the Government promotes the involvement of professionals in schools and provides incentives to employers to cooperate with schools by providing them tax relief when they demonstrably participate in cooperation agreements with schools to provide training. In line with new measures for the promotion of vocational training, the Government recommends ensuring a unified procedure for concluding a contractual relationship between an employer and a secondary school student or a student of a higher vocational school who is being prepared for work. The Government has also modified final examination requirements to allow a mandatory single final examination in certain fields where accompanied with a certificate of apprenticeship. The Government indicates that experimental verification of the multi-tiered education model and completion of education will take place from the school year 2016–17 until the school year 2022–23. The results of the experimental verification will be used to modify the framework of educational programmes in selected fields of education. ***The Committee requests the Government to continue to provide information on the impact of education and training policies and programmes on the employment opportunities on workers, including young people.***

*Business development.* The Government indicates that in the framework of the Operational Program Enterprise and Innovation 2007–13 (OPEI), a total of 41,470 jobs were created by the end of 2015, with the share of women standing at 30.8 per cent. Of those, 6,073 jobs were created in research and development. The Operational Program on Entrepreneurship and Innovation for Competitiveness 2014–20 is being implemented in the new programming period. ***The Committee requests the Government to continue to provide information on the impact of business development measures on employment creation.***

*Article 3. Consultations with the social partners.* The Government indicates that the focus of the active employment policy is regularly discussed on a tripartite basis. At the national level, from September 2011 to October 2014, the Plenary Session of the Council of Economic and Social Agreement met several times and discussed various employment-related issues. At the regional level, to ensure cooperation in the labour market, the Public Employment Service establishes advisory councils which meet at least twice a year and are composed primarily of representatives of trade unions, employers' organizations, cooperative bodies, organizations of persons with disabilities, the Czech Chamber of Commerce and self-governing territorial units. The purpose of each of these advisory councils is to coordinate the implementation of the employment policy and human resource development in the respective administrative districts. Furthermore, the social partners are involved in the Labour Market Predictions project (KOMPAS), launched on 1 January 2017 to build a comprehensive system capable of predicting developments in the labour market in future years. **The Committee requests the Government to continue to include information on the involvement of the social partners, in accordance with Article 3 of the Convention, which requires their views and experiences to be fully taken into account when designing and implementing an active employment policy and to include indications in its next report on the manner in which consultations held in the Council of Economic and Social Agreement and the advisory bodies have contributed to the implementation and coordination of an active employment policy.**

## Djibouti

### Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

*Article 1 of the Convention. Adoption and implementation of an active employment policy. ILO technical assistance.* In response to previous comments, the Government indicates in its report that, although the strategy for the formulation of a national employment policy was commenced in April 2003, and new structures have been established, the preparation of a national employment policy paper has still not been completed. The Committee notes that the National Employment Forum held in 2010 showed the need to develop a new employment policy adapted to labour market needs, which will have to target as a priority the reform of the vocational training system and the improvement of employment support services. The Government indicates that, out of a population of 818,159 inhabitants of working age, recent estimates place the unemployment rate at 48.4 per cent. It also indicates that, following a mission for the evaluation of technical cooperation undertaken by the ILO in March 2011, the Government reiterated its commitment to developing a Djibouti Decent Work Programme. It adds that it is still awaiting Office support for this purpose. **The Committee requests the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies, and on the progress made in the adoption of a national policy for the achievement of full employment within the meaning of the Convention.**

*Youth employment.* The Government indicates that in 2012, despite a certain improvement, unemployment particularly affected young persons with higher education degrees. Moreover, although the country does not currently have a formal strategy to promote youth employment, several initiatives have been established to improve the operation of the labour market, promote entrepreneurship and provide training adapted to labour market needs. **The Committee invites the Government to provide information on the manner in which the measures adopted have resulted in productive and lasting employment opportunities for young persons, and on the collaboration of the social partners in their implementation.**

*Article 2. Collection and use of employment data.* In March 2014, the Government provided the summary of the employment situation prepared by the National Employment and Skills Observatory. The number of jobs is increasing (30,118 jobs created in 2007, 35,393 in 2008 and 37,837 in 2010). **The Committee invites the Government to indicate the measures taken to improve the labour market information system and to consolidate the mechanisms linking this system with decision-making in the field of employment policy. It also requests the Government to provide updated statistical data disaggregated by age and sex, as well as any other relevant data relating to the size and distribution of the workforce, the nature and scope of unemployment and underemployment and the respective trends.**

*Article 3. Collaboration of the social partners.* **The Committee recalls the importance of the consultations required by the Convention and once again requests the Government to provide information on the measures adopted or envisaged for the consultation of the representatives of the persons affected on employment policies.**

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

## Dominican Republic

### Employment Policy Convention, 1964 (No. 122) (ratification: 2001)

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* The Committee notes with *interest* the adoption in 2014 of the National Employment Plan (PNE), whose objectives include the creation of 400,000 jobs in four years, the promotion of decent jobs, the formalization of employment, equality of opportunities, equity and access to security. The Committee also observes that, according to the statistics contained in the PNE, men account for 60.64 per cent of the active population, the unemployment rate has fallen in recent years (to between 5.7 and 6 per cent), and young persons who are neither working nor studying (NEET) account for 7.71 per cent of the working-age population. Furthermore, as regards informality in the labour market, the PNE indicates that the reduction in the unemployment rate is based on an increase in informal employment and that 56.16 per cent of the active population was working in the informal economy in 2012. In this respect, the Government indicates in its report that the current definition of "informality" is being revised with ILO technical assistance and that the statistics will better reflect that definition in the future. The Committee also notes that the Government has prepared a guide concerning the formalization

of micro-enterprises. *The Committee requests the Government to continue providing information on the implementation and impact of the PNE and to supply statistical data on labour market trends, including employment, unemployment and underemployment rates, disaggregated by age and sex. It also requests the Government to provide up-to-date information on the open unemployment rate and the rate of informality in the labour market, including information on the impact of the measures taken to facilitate the transition of workers from the informal to the formal economy. In this regard, the Government may consider it useful to take account of the guidance provided by the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).*

*Coordination of training and employment policies.* The Government refers to training programmes established under the PNE, such as labour training provided by the Directorate of Employment for 10,037 young persons in vulnerable unemployment conditions between 2013 and 2016, and training by the National Institute of Vocational and Technical Training for 1,820 young entrepreneurs, 60 per cent of whom were women. In the course of the abovementioned training, access to micro-financing for their businesses was provided for 3 per cent of participants. The Committee also notes that, in order to facilitate access to employment services, in 2016 the virtual platform of the National Employment Service (SENAE) was modernized, enabling the registration in the “Electronic employment exchange” of 55,966 requests for employment and 912 enterprises. The same year saw the establishment of the “Integrated labour registration system” (SIRLA), facilitating the registration of new employees on company payrolls and the exchange of information with the Treasury Department of the National Social Security System, thereby enabling the incorporation of 171,078 workers into the system. Lastly, the Committee notes the Government’s indication in its report that the technical committee at the Ministry of Labour responsible for follow-up to the implementation of the PNE is undertaking a qualitative evaluation of the Plan. *The Committee requests the Government to provide relevant data, including statistics disaggregated by age and sex, on the impact of training programmes on securing sustainable employment. The Committee also requests the Government to send a copy of the qualitative evaluation of the PNE once it is available.*

*Specific groups vulnerable to decent work deficits.* The Government indicates that the Ministry of Labour has established a series of programmes and projects for specific groups of disadvantaged workers, such as young people, persons with disabilities and women. In this regard, the Government indicates that: (i) from 2013 to 2015, the Ministry of Labour implemented the “Training programme for young persons in different occupations”, whereby training was provided for 602 unemployed young persons between 16 and 26 years of age, of whom 25 per cent were living with some form of disability; (ii) from 2015, the “Special projects workshop” was set up, with the aim of helping to secure employment for individuals with moderate hearing and learning disabilities; (iii) the “Ministry of Labour reaching out to communities” initiative, which provides the most vulnerable sectors in the country with information on employment, was implemented in 11 communities and was attended by 4,197 unemployed persons; (iv) 430 young persons took part in the “Entrepreneurship unit” training programme for unemployed persons between 20 and 35 years of age belonging to a disadvantaged category (persons with disabilities, women who are single parents, and young people who are neither working nor studying) and seeking to develop opportunities for self-employment; and (v) the “Youth entrepreneurship” training programme set up regional groups to provide local support and follow-up for the projects of young entrepreneurs and published a guide to the formalization of business and a national entrepreneurship policy. As regards persons with disabilities, the Committee notes the adoption of Act No. 5-13 of 15 January 2013 concerning disability in the Dominican Republic, which provides for minimum quotas, tax deductions and tax exemptions for companies hiring persons with disabilities. *The Committee requests the Government to provide information on the impact of programmes for the promotion of youth employment, including statistics disaggregated by age and sex. It also requests the Government to supply information on any measures taken or contemplated to promote women’s access to formal and lasting employment, particularly for women who are single parents. Moreover, referring to its previous comments on the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Committee requests the Government to provide detailed information on the impact of Act No. 5-13 and its implementing regulations regarding the access of persons with disabilities to the open labour market.*

*Article 1(2)(c). Migrant workers and workers of Haitian origin.* With regard to migrant workers, the Government indicates that the Ministry of Labour, in order to prevent abuses at the time of hiring and to observe the respective proportions of national and foreign workers laid down in the Dominican Labour Code (80 and 20 per cent, respectively), drew up a proposal for the regularization of the hiring of foreign workers. The Government also states that the Directorate of Employment drew up an inventory of occupations whose nature is such as to make it difficult to recruit national workers in sufficient numbers; this will give the Directorate greater powers of discretion when granting recruitment permits, particularly in the construction sector and agriculture. In this regard, the Committee refers to its previous comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), relating to discrimination in employment against persons of Haitian origin (Dominican citizens of Haitian extraction and Haitian nationals), and hopes that the PNE will include measures to prevent abuses in the hiring of foreign workers in the country. *The Committee requests the Government once again to indicate the measures taken or contemplated to prevent abuses in the hiring of foreign workers in the country. The Committee also requests the Government to provide information on the outcome of the Ministry of Labour’s proposal relating to the regularization of the hiring of foreign workers.*

*Small and medium-sized enterprises (SMEs).* The Committee notes that the objectives of the PNE relating to micro-, small and medium-sized enterprises envisage the creation of 5,000 new enterprises and 90,000 new jobs in four years, a 10 per cent increase in the rate of formality and the creation of 200 new agricultural and commercial cooperatives. In this regard, the Government refers in its report to a series of measures taken to facilitate the creation of SMEs, such as the creation of a guarantee fund (provided for in Act No. 488-08), the setting up of a single window at the National Tax Directorate to expedite formalization procedures, and the promotion of new export markets. The Committee also notes that, in agreement with the Inter-American Development Bank, the Government has implemented policies regarding the award of public contracts to SMEs, enterprises owned by women, ecological enterprises and innovative entrepreneurs. The Government has also taken steps to evaluate the impact of such policies. ***The Committee requests the Government to provide detailed information on the measures taken or contemplated to facilitate the creation of micro-, small and medium-sized enterprises and of cooperatives in the country, particularly in regions which are adversely affected and have the highest unemployment rates. The Committee also requests the Government to supply statistical data on the number and type of enterprises created and the number of jobs created by such enterprises. Lastly, the Committee further requests the Government to provide information on the evaluation of policies for the award of public contracts to SMEs and the impact thereof.***

*Article 3. Consultations.* ***The Committee requests the Government to provide information on the consultations held with the social partners, at both national and regional level, regarding the formulation and implementation of labour policy measures and employment and training programmes. The Committee also requests the Government to indicate the manner in which consultations are ensured with persons affected by the measures taken or contemplated, in particular representatives of workers in rural areas and in the informal economy, in order to take account of their experience and views in the formulation and implementation of programmes and measures to promote full and productive employment.***

## India

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1998)**

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* In its previous comments, the Committee invited the Government to provide information on the extent to which the measures implemented under the 11th Five-Year Plan (2007–12) had managed to improve the quality of the employment generated and alleviate unemployment and underemployment. The Government indicates in its report that it has been implementing various employment generation and poverty alleviation programmes across the country, with particular emphasis on programmes targeting young persons and workers in the unorganized sector. Budget allocations under these programmes, including the Prime Minister’s Employment Generation Programme, have increased substantially. It is expected that higher investment will generate a greater number of employment opportunities for the benefit of people from all segments of society. The Committee notes that the “Pradhan Mantri Rojgar Protsahan Yojana” scheme, included in the 2016–17 Budget, aims to promote employment in the formal economy. Under this scheme to promote the creation of new formal sector jobs, the Government will pay the Employee Pension Scheme contribution of 8.33 per cent for all new employees enrolling in the Employees’ Provident Fund Organisation (EPFO) during the first three years of their employment. In order to target semi-skilled and unskilled workers, the scheme will apply only to those workers receiving a salary of up to Indian rupees (INR) 15,000 per month. The Committee further notes that the 12th Five-Year Plan (2012–17) contemplated the creation of 50 million new employment opportunities in the non-farm sector, and skill certification for an equivalent number of persons. In addition, the Government has introduced “Make in India”, a new national programme designed to facilitate foreign investment, foster innovation and enhance skills development. The National Manufacturing Policy aims to create an additional 100 million jobs by 2022. The Committee notes the Government’s indication that the Ministry of Labour and Employment is in the process of formulating a National Employment Policy. To this end, an Inter-Ministerial Committee has been constituted and consultations with different stakeholders are ongoing. ***The Committee requests the Government to provide further information on the development of the National Employment Policy in consultation with the social partners and to provide a copy of the policy once it is adopted. It also requests the Government to provide further information on the impact of the increased budgetary allocations on employment creation, as well as detailed information, including statistical information, disaggregated by age, sex and disadvantaged group, such as scheduled castes and scheduled tribes, on the impact of employment programmes targeting workers in the informal economy. In this respect, the Government may consider it useful to consult the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).***

*Labour market trends.* The Committee notes that the workforce increased from 459 million in 2004–05 to 474 million in 2011–12. In comparison, the increase in employment from 2004–05 to 2009–10 was just 1.1 million. The total workforce was estimated at 487 million in 2016, of which approximately 57 per cent were employed in the non-farm sector. The Committee further notes the statistical information provided by the Government on the labour force participation rate and unemployment rate. Unemployment increased to 4.9 per cent in 2013–14, up from 3.8 per cent in 2011–12. The Committee notes in this regard that the statistics indicate that the labour force participation rate was highest among the scheduled tribes, followed by the scheduled castes, and “other backward classes”, as these terms are referred to in the Constitution of India and national legislation. It also observes the continued significant differences in labour force

participation between women and men. *The Committee requests the Government to continue to provide updated statistical data, disaggregated as much as possible by age, sex, skills, disadvantaged group, such as scheduled castes and scheduled tribes, state and sector, on the situation and trends of labour force participation, employment, unemployment and underemployment, in both the formal and informal economies. It also requests the Government to provide information on its labour market information system and how it plans to produce timely employment data to help design more effective employment policies.*

*Employment programmes.* In its previous comments, the Committee invited the Government to provide information on the impact of the Mahatma Gandhi National Rural Employment Guarantee Act programme (MGNREGA), a demand-driven wage employment programme, and other employment schemes. The Government indicates that it developed and launched a “Project for Livelihoods in Full Employment” (Project LIFE-MGNREGA) in the framework of the MGNREGA programme in April 2015. The Project seeks to promote self-reliance and improve the skills of MGNREGA workers, helping them to develop skills to enable them to move from being dependent on Government support into accessing full employment and better incomes. The Government adds that implementation of the MGNREGA has: (i) reduced distress migration among the rural poor; (ii) smoothed rural consumption in the lean season; (iii) set high standards of transparency; (iv) addressed underemployment; (v) created assets that improved livelihoods; (vi) boosted financial inclusion; (vii) strengthened Gram Panchayats; (viii) improved wage levels in rural areas, increasing the income levels of the poorest of the poor; (ix) set standards for decent working conditions; and (x) brought fallow lands into cultivation. The Committee notes that the MGNREGA programme generated 2.2 billion total person-days in 2013–14 and 2.35 billion total person-days in 2015–16. *The Committee requests the Government to continue to provide information on the impact of employment programmes adopted, including the MGNREGA, in enhancing job growth and sustainable employment. It also requests the Government to provide further information on employment programmes aimed at increasing the labour force participation of women as well as those aimed at increasing the labour force participation of vulnerable groups, including persons with disabilities and those belonging to the scheduled castes and scheduled tribes.*

*Article 3. Consultation with the social partners.* The Government indicates that the social partners are actively involved in the implementation of the major employment generation programmes through tripartite consultation. It adds that tripartite consultations are held at regular intervals in the Indian Labour Conference. *The Committee requests the Government to provide detailed information on the consultations held with the representatives of employers’ and workers’ organizations concerning the formulation and implementation of an active employment policy and employment programmes. It also requests the Government to provide information on the scope and frequency of the consultations held within the Indian Labour Conference on the matters covered by the Convention.*

## Ireland

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

*Articles 1 and 2 of the Convention. Employment policy measures.* In its previous comments, the Committee requested the Government to provide information on the application of *Article 2* of the Convention, including on the manner in which employment policy measures are decided on and kept under review within the framework of a coordinated economic and social policy. The Committee notes the Government’s indication that it continues to tackle unemployment through its twin key strategies: the Action Plan for Jobs (APJ) and Pathways to Work. The APJ complements Pathways to Work, which targets the unemployed and young people, to assist them in accessing the labour market. Through these twin strategies, the Government aims to see 2.1 million people in employment by 2018. Following the 2014 Organisation for Economic Co-operation and Development (OECD) review of the APJ process, a performance assessment framework was introduced to link actions more clearly to the Government’s high level strategic goals. The APJ is published each year and builds on progress made in previous plans. The Committee notes that the main objectives of the current APJ, launched in February 2017, are, by 2020: to increase the number of people at work by 200,000; to add up to 45,000 new jobs; and to reduce the unemployment rate to 6 per cent. Between June 2015 and January 2016, eight Regional APJs were published, which seek to increase employment by a further 10 to 15 per cent in each region by 2020 as well as to ensure that the unemployment rate in these regions is within one per cent of the state average. Key targets of the regional APJs include increasing the number of entrepreneurs/start-ups in each region by at least 25 per cent, improving their five-year survival rate and increasing FDI investment into each region by 30–40 per cent. The Government’s second key strategy, Pathways to Work 2016–20, adopted in January 2016, sets out actions to support access to the labour market for long-term unemployed and young unemployed people. The Government adds that the strategy seeks to reverse the dramatic rise in the numbers of unemployed jobseekers on the Live Register. Pathways to Work 2012–15 has played a key role in increasing the number of people in work, which will shortly exceed two million, and that the number of unemployed during 2012–15 fell by about 38 per cent, with the overall rate of unemployment having fallen to 8.8 per cent in this period. Moreover, according to the APJ 2017 report, the number of young unemployed declined from 61,700 in December 2012 to 29,400 in December 2016. Recognizing that experience from other recoveries has shown that job creation alone is not sufficient to generate full employment, Pathways to Work 2016–20, developed through extensive consultation with stakeholders and front-line workers engaged in delivering employment services, reflects a shift from “activation in a time of recession” to “activation in a time of recovery and growth”. The Committee

refers to its comments under the Employment Service Convention, 1948 (No. 88), in which it noted that based on six strands of action, the strategy focuses on enhancing employment, education and training services for jobseekers; reforms aimed at making work pay; and increasing engagement with employers to provide employment opportunities. ***The Committee requests the Government to continue to provide information on the impact of the employment measures taken under the twin key strategies: Action Plan for Jobs and Pathways to Work 2016–20. It also requests the Government to continue to provide information on the procedures for deciding on and reviewing employment measures implemented within the framework of an overall economic and social policy.***

***Education and training policies and programmes.*** The Committee notes the Government’s indication concerning the adoption of the first Action Plan for Education 2016–19 in September 2016, which aims to make the Irish education and training service the best in Europe by 2026. It envisages the consultation with stakeholders in the monitoring and designing of each annual programme. The Committee notes that in the context of significant reform in the education and training sector, the Government launched the National Skills Strategy 2025, which seeks to support the development of a well-educated, well-skilled and adaptable labour force, and the Further Education and Training Strategy 2014–19, which facilitates lifelong learning, social inclusion and access to education and training opportunities. These strategies include among its key priorities addressing the challenge of unemployment and providing targeted skills programmes that support job seekers to reskill and upskill, particularly in areas where sustainable employment opportunities are emerging. ***The Committee requests the Government to provide information on the impact of the Action Plan for Education, the National Skills Strategy 2025, and the Further Education and Training Strategy 2014–19. It also requests the Government to indicate the manner in which the social partners and other stakeholders concerned are consulted with respect to the development of education and training programmes that meet the needs of the labour market.***

***Article 3. Consultations with the social partners.*** The Government indicates that the development, implementation and review of the APJ and the Pathways to Work strategies are based on extensive consultation with interested parties, including the workers’ and employers’ organizations Irish Congress of Trade Unions (ICTU) and the Irish Business and Employers’ Confederation (IBEC), respectively, as well as those unemployed. The Committee notes with ***interest*** the establishment of the Labour Employer Economic Forum (LEEF), as a new formal structure for dialogue between social partners to discuss economic and social policies that affect employment and the workplace. ***The Committee requests the Government to provide further information on the activities of the LEEF with respect to the development, implementation and review of coordinated employment policy measures and programmes and their links to other economic and social policies.***

## Japan

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1986)***

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) and the Japan Business Federation (NIPPON KEIDANREN), communicated with the Government’s report. It also notes the Government’s reply to the 2014 observations of the Japan Postal Industry Workers’ Union (YUSANRO), as well as the most recent observations presented by YUSANRO, received on 24 May 2016.

***Articles 1 and 2 of the Convention. Employment trends and active labour market measures.*** In its previous comments, the Committee requested the Government to provide information on the employment measures adopted to promote full employment within a coordinated economic and social policy. The Committee notes the information provided by the Government in its report concerning the adoption of the Basic Guidelines for Employment Policies in 2014, which set out the direction to be followed by employment policies during the five-year period following its adoption. The Guidelines provide for the strengthening of the labour market infrastructure and the creation of high-quality employment to promote growth in the context of structural changes in employment, including a reduction in the active population, as well as the impact of globalization. In addition, the Long-term Vision for Overcoming Population Decline and Vitalizing the Local Economy in Japan was adopted in 2014 to address issues such as the declining population and shrinking local economies. The Committee also notes that, according to the Labour Situation in Japan and its Analysis: General Overview 2015–16 of the Japan Institute for Labour Policy and Training, the 2015 Japan Revitalization Strategy signaled the start of the second phase of the integrated economic policy “Abenomics”, which includes measures to overcome labour supply constraints as a result of the reduction in the active population due to a decreasing birth rate and the aging of the population. In terms of labour policy, the strategy aims to optimize the potential of individual employees by curbing overlong working hours to improve the quality of work performed; promoting increased participation by women, older workers, and other underrepresented groups; and reforming education and employment practices. Moreover, the Government refers to the adoption of several employment measures in disaster-affected prefectures, including the launch in 2016 of the employment support project in response to nuclear accidents, which seeks to ensure temporary employment for those affected by nuclear accidents in the Fukushima Prefecture. The implementation period and funding for the emergency employment support project in response to the East Japan Great Earthquake and the Business Recovery Employment Creation Project were extended in 2015 and 2016, respectively. In relation to employment trends, the Committee understands that, according to the Organisation for Economic Co-operation (OECD) Employment Outlook 2017 on Japan, the country performs particularly well in terms of quantity of employment, achieving the lowest

unemployment rate among OECD countries and a relatively high employment rate. The low risk of unemployment is also reflected in a low level of labour market insecurity. In particular, the Government indicates that, as of 2016, the unemployment rate was 3 per cent, is the lowest rate for the past 18 years. In its observations, however, the YUNSARO emphasizes that disparity and poverty is increasing in Japan. In this regard, the OECD report states that Japan shows some weaknesses in job quality and labour market inclusiveness. A relatively high share of working-age persons experience job stress and work exclusively long hours. With respect to inclusiveness, both the high low-income rate and a big gender labour income gap indicate that some workers face barriers to accessing decent jobs. ***The Committee requests the Government to provide detailed updated information on the impact of the employment measures adopted, including the measures implemented under the Japan Revitalization Strategy, the Long-term Vision for Overcoming Population Decline and Vitalizing the Local Economy in Japan and the Basic Guidelines for Employment Policies. It also requests the Government to provide updated information, including statistics on employment trends, disaggregated by age and sex, and on the procedures for deciding on and reviewing employment measures implemented within the framework of an overall economic and social policy.***

***Article 3. Participation of the social partners.*** The Government indicates that the tripartite Labour Policy Council has deliberated on important matters concerning the enactment, amendment and enforcement of employment legislation, and its opinions were taken into account in the planning and designing of employment policies. ***The Committee requests the Government to continue to provide information on the activities of the Labour Policy Council with respect to the development, implementation and review of employment policy measures and programmes and their links to other economic and social policies. It also requests the Government to provide information on the manner in which representatives of those affected by the measures concerned are consulted.***

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

### ***Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)***

The Committee notes the observations of the National Union of Welfare and Childcare Workers (NUWCW) received on 23 August 2016. It also notes the observations of the Japanese Trade Union Confederation (JTUC-RENGO), which were transmitted together with the Government's report. ***The Committee requests the Government to provide its comments in this regard.***

***Articles 1, 2 and 3 of the Convention. Employment promotion for persons with disabilities.*** The Committee notes with ***interest*** that the Act on the Elimination of Discrimination against Persons with Disabilities entered into force on 1 April 2016. In reply to the Committee's previous comments, the Committee notes the Government's indication that 474,374 persons with disabilities were employed in the private sector as of June 2016, representing a 4.7 per cent (21,240 persons) increase over previous years. The Government adds that the employment rate of persons with disabilities has been increasing over the past 13 years, reaching 1.92 per cent in 2016, compared to 1.88 per cent in 2015. The NUWCW indicates, however, that the increased employment rate of persons with disabilities has been accompanied by declining wages, an increase in non-regular employment and deteriorating working conditions. With regard to measures adopted to achieve the statutory employment quota of 2 per cent employment of persons with disabilities in all companies, the Government indicates that guidance is provided to companies that have not achieved the minimum quota, including support in the elaboration of employment plans and recommendations to assist companies in appropriately implementing those plans. If the measures taken do not lead to improvements, the names of the companies are disclosed in accordance with the Act for the Promotion of Employment for Persons with Disabilities (Act No. 123 of 1960). Companies that have not complied with the statutory employment quota are also required to pay a special levy that is used to finance subsidies and awards for companies exceeding the statutory employment quota. The Government indicates that the application of the levy system was extended in April 2015 from companies with more than 200 employees to those with more than 100 employees. The NUWCW is of the view that the levy system is not effective, since it is less costly to pay the fine (¥50,000 per month) than to employ a person with disability. The JTUC-RENGO points out that less than half (48.8 per cent) of companies have met the statutory employment quota. Moreover, of the companies that have not complied with the statutory quota, 58.9 per cent of these have not employed any persons with disabilities. The Committee notes the observations of JTUC-RENGO, indicating that as of April 2018, persons with mental disabilities will be included in the calculation basis for the statutory employment quota, and that quota will be increased to 2.3 per cent for private companies over a five-year period (2018–23). Referring to the Government's report, the NUWCW states that the statistics provided do not reflect the actual employment situation of persons with disabilities. In this regard, the NUWCW points out that the Government conducts a survey on employment of persons with disabilities every five years, whereas it carries out a Monthly Labour Force Survey on the employment of workers in general. ***The Committee requests the Government to continue to provide information on the nature and impact of measures taken to achieve the statutory employment quota for persons with disabilities in all companies subject to the quota requirement, including the number and amount of sanctions imposed for non-compliance. It also requests the Government to continue to communicate information on the impact of the measures implemented in terms of increasing the employment opportunities for persons with disabilities in the open labour market, including on the implementation of the 2016 Act on the Promotion of the Elimination of Discrimination against Persons with Disabilities. The Government is further requested to supply***

*updated statistics, disaggregated as much as possible by sex, age and nature of the disability, as well as extracts from reports, studies and inquiries concerning the matters covered by the Convention.*

*Article 5. Consultations with the social partners.* In response to the Committee's previous comments, the Government reiterates that the Labour Policy Council's Subcommittee on the Employment of Persons with Disabilities establishes the objectives fixed in employment policies for persons with disabilities, implements the policies and evaluates the outcomes. As an example, the Government refers to the formulation of two sets of guidelines for employers on the prohibition of discrimination against persons with disabilities and on the provision of reasonable accommodation, in which the views of the Subcommittee on the Employment of Persons with Disabilities, as well as organizations of and for persons with disabilities were taken into account. The NUWCW is of the view that the structure of the Labour Policy Council should be modified to guarantee that the opinions of the social partners are effectively taken into account. Referring to the revision of the Comprehensive Support Act for Persons with Disabilities in 2016, the NUWCW notes that organizations of persons with disabilities were excluded from its formulation and evaluation, reiterating that neither the Japan Council on Disability nor its own affiliates were able to participate in discussions in the Labour Policy Council. ***The Committee requests the Government to continue to provide examples of the manner in which the views and concerns of the social partners and representatives of organizations of and for persons with disabilities are systematically taken into account in the formulation, implementation and evaluation of the policy on vocational rehabilitation and guidance and the employment of persons with disabilities.***

### ***Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)***

*Articles 1(3) and 3. National policy aimed at ensuring appropriate vocational rehabilitation for all categories of persons with disabilities.* (a) *Criteria used to determine whether a person with disabilities is considered to be able to "work under an employment relationship" (paragraph 73 of the tripartite committee report, document GB.304/14/6).* The Committee recalls the recommendations of the tripartite committee established by the Governing Body to examine a representation alleging non-observance by Japan of the Convention (304th Session, March 2009). The Committee also recalls that it has been entrusted with following up on implementation of the recommendations of the tripartite committee. In this context, the Government has provided updated information in its report on the implementation and results of measures taken to promote employment for persons with disabilities. The Government reports that 31,000 persons with disabilities participate in employment-related activities under the Employment Transfer Support Programme (ETSP). It adds that the number of persons with disabilities transferred to regular employment under the ETSP increased from 2,500 persons in 2006 to 12,000 persons in 2015. In addition, the Government indicates that there are 230,000 persons with disabilities participating in Type-B programmes (designed for those requiring support for continuous employment) under the Support Programme for Continuation of Work (SPCW). In 2016, 2,646 persons participating in the Type-B programmes were transferred to regular employment. With regard to measures taken by public employment service offices, the Government refers to the continued implementation of the "team support" model, which provides support to persons with disabilities from employment through to workplace adaptation. The Government adds that 3,120 Employment Transfer Support Offices and 330 Employment and Vocational Life Support Centres for Persons with Disabilities were established as of March 2017 (the latter representing an increase from 325 Centres in April 2015). Moreover, 810 employment support seminars were held and 957 trainings at workplaces were conducted in 2015 with the aim of promoting the transition of persons with disabilities from welfare into regular employment. ***The Committee requests the Government to continue to provide detailed updated information on the measures taken or envisaged to increase employment and income-generating opportunities for persons with severe disabilities that have difficulties in entering into an employment relationship and accessing the open labour market. The Committee would also welcome receiving updated information on the number of persons transferring from Type-B programmes under the SPCW to Type-A programmes and into regular employment, as well as on the impact of measures implemented by the Public Employment Security Office to assist persons with disabilities in transitioning from welfare to employment on the open labour market.***

(b) *Bringing work performed by persons with disabilities in sheltered workshops within the scope of the labour legislation (paragraph 75 of the report).* In reply to the Committee's previous comments, the Government indicates that support measures for jobseeking and workplace adaptation have been provided to persons with disabilities under the Type-B programmes. In its observations, the NUWCW indicates that persons with disabilities participating in the Type-B programmes are not provided with the same legal protections at the workplace as other workers. It adds that employment support services are not provided taking into account the vocational needs of persons with disabilities. ***The Committee requests the Government to continue to provide information on the nature and impact of the measures taken to ensure that the treatment of persons with disabilities in sheltered workshops is in line with the principles of the Convention, particularly the manner in which the principle of equality of opportunity and treatment is ensured (Article 4).***

(c) *Low pay for persons with disabilities carrying out activities under the Type-B programmes under the SPCW (paragraph 76 of the report).* The Government indicates that, following the implementation of measures adopted in the framework of the Wage Improvement Plans in each prefecture, the pay of workers in the Type-B programmes increased by 23 per cent from 2015 to 2016. In addition, the Government indicates that, under Act No. 50 of 2012 concerning the Promotion of Public Procurement of Goods from Disabled Employment Facilities, ¥15.7 billion of such goods were

procured in 2016. In contrast, the NUWCW refers to a study on the actual situation of persons with disabilities, which shows that the ratio of persons with disabilities living on an annual income of less than ¥1,000,000 increased in 2016. The NUWCW indicates that, according to the Basic Survey on Wage Structure, the difference between the average pay of persons with disabilities under the Type-B programmes and the average wage of workers generally was ¥288,500 in 2007 and ¥284,762 in 2014. The JTUC–RENGO reiterates that continued efforts are required to improve the level of wages in the Type-B programmes. ***The Committee requests the Government to continue to provide information on the measures taken or envisaged to ensure equality of terms and conditions of employment, including in terms of wages for persons with disabilities participating in Type-B programmes.***

(d) *Service fees for participants in Type-B programmes under the SPCW (paragraphs 77 and 79 of the report).* The Government once again indicates that persons with disabilities in low-income households are exempted from payment of disability social service fees. It adds that 93.3 per cent of the users of disability social services, including participants in Type-B programmes, were using these services free of charge as of November 2016. In its observations, the NUWCW states that disability social services are covered by both welfare and labour policies. Services based on labour policies are free of charge, while those based on welfare policies are provided against a fixed payment. ***The Committee encourages the Government to continue to take positive measures in this regard and to provide information on the impact of the measures taken to ensure that persons with disabilities are encouraged to become involved in such programmes and eventually gain access to the labour market.***

*Articles 3, 4 and 7. Equality of opportunity between persons with disabilities and workers generally. Quota system for the employment of persons with disabilities (paragraphs 81 and 82 of the report).* The Committee notes the Government's indication that the number of persons with severe disabilities in employment has continued to increase from 106,362 in June 2015 to 109,765 in June 2016. The Government reiterates that the system of double counting persons with severe disabilities (counting one person as two persons) is therefore effective and necessary to promote the employment of persons with severe disabilities. The NUWCW requests that the double-counting system be reconsidered. ***The Committee requests the Government to continue to provide information on persons with disabilities and persons with severe disabilities employed under the quota system, including on any modifications made or envisaged to the double-counting system.***

*Reasonable accommodation (paragraph 84 of the report).* The Government indicates that the 2016 Act on the Promotion of the Employment of Persons with Disabilities provides for the obligation to provide reasonable accommodation. The Government provides information on the implementation of the practical manuals and guidelines on the prohibition of discrimination against persons with disabilities and on the provision of reasonable accommodation. In this regard, the Government indicates that persons with disabilities provide information on the modifications or adjustments needed to private companies at the time of recruitment, and then both parties discuss the request to reach a decision regarding the possible provision of the workplace accommodation. The Government adds that the obligation to provide reasonable accommodation excludes cases where an “excessive burden” is imposed on the private company. The JTUC–RENGO is of the view that certain aspects of the cited Act remain problematic, including the fact that it only requires private companies to make an effort to reasonably accommodate persons with disabilities and that it does not establish a conflict resolution mechanism. Therefore, the JTUC–RENGO indicates that measures to enhance the efficacy of the Act should be adopted before its re-evaluation, which will take place at the end of the third year after its entry into force. The NUWCW indicates that it will be necessary to monitor the system's operations in collaboration with the stakeholders. Referring to the information provided by the Government in its previous report with regard to the right to file a complaint and to engage in conflict resolution concerning reasonable accommodation, the NUWCW points out that there is one conflict resolution mechanism established for all workers, and that the mechanism is not binding. It considers that it is necessary to establish a mechanism enabling workers with disabilities to negotiate with their employers to obtain reasonable accommodation. ***The Committee requests the Government to continue to provide information on the implementation and results of measures taken concerning the provision of reasonable accommodation in the workplace, including information concerning any evaluation carried out regarding the Act on the Employment Promotion of Persons with Disabilities.***

## Republic of Korea

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1992)***

The Committee notes the observations of the Korea Employers' Federation (KEF) and the Federation of Korean Trade Unions (FKTU) communicated with the Government's report, as well as the Government's response thereto.

*Articles 1 and 2 of the Convention. Overall labour market trends.* In its previous comments, the Committee requested the Government to provide an analysis of labour market trends, taking into account the concerns expressed by the social partners regarding the employment policy measures implemented. The Committee notes the information provided by the Government indicating that the overall employment rate increased from 64.2 to 65.7 per cent between 2012 and 2015, while the unemployment rate increased from 3.3 to 3.7 per cent during the same period. In its observations, the FKTU maintains that the number of quality jobs is decreasing, referring to the results of the 2015 Employment Type Disclosure System (ETDS), which shows that larger enterprises are hiring more non-regular workers,

while conglomerates (*chaebol*) are hiring more indirect (dispatched) workers. The FKTU also refers to the short (5.6 years) average period of service of Korean workers in 2015, compared to an average 9.5 years of service in the Organisation for Economic Co-operation (OECD) member countries. It observes that 19 per cent of workers work in excess of the statutory working hours and permissible overtime, and annual working hours have increased to 2,285 hours per year in 2015. The FKTU also expresses concern that the Government has taken measures that make it easier to dismiss workers, indicating that the Government is creating non-regular jobs by splitting quality jobs into low-paid part-time jobs to achieve its goal of attaining a 70 per cent overall employment rate by 2017. The FKTU adds that there is a lack of training opportunities for persons belonging to disadvantaged social groups, such as workers in small and micro-sized enterprises (SMEs) and those in non-regular employment. In its reply to the FKTU's observations, the Government indicates that the number of decent jobs is not decreasing, referring to an increase in the proportion of regular workers among wage workers from 2012 to 2015 and a decrease in the proportion of non-wage workers (self-employed and unpaid family workers) (from 28.2 per cent in 2012 to 25.9 per cent in 2015). ***The Committee requests the Government to provide comprehensive updated information on the overall labour market trends, including statistical data disaggregated by sex and age, indicating the situation, level and trends of employment, unemployment and underemployment. It also invites the Government to continue to provide detailed updated information regarding the impact of active labour market measures implemented. The Committee further requests the Government to provide information on the manner in which the principal employment policy measures are decided upon and kept under periodical review within the framework of a coordinated economic and social policy, as required under Article 2 of the Convention.***

***Job creation measures.*** The Government reports that it is actively promoting policies designed to safeguard working conditions for disadvantaged workers, referring to the Roadmap to a 70 per cent Employment Rate, launched in June 2013. The Roadmap is a national strategy that establishes policies for job creation aimed at addressing dualism in the labour market and strengthening social responsibility. The Government adds that its policies have resulted in an increase of regular workers (from 43.9 per cent to 48.5 per cent), while non-regular workers (34.2 per cent to 32.5 per cent) and low-wage workers (23.8 per cent to 23.5 per cent) have decreased over the past five years, demonstrating that the policies have been effective in at least partly addressing labour market dualism. The FKTU observes that, notwithstanding these measures, as of 2015, the number of non-regular workers had reached a high of 8.68 million, with 96.5 per cent of these workers wholly or partly in temporary employment, and there was an increase in indirect employment in large enterprises and the public sector. In addition, the proportion of part-time jobs had increased to 11.6 per cent. The FKTU adds that indirect employment has increased both in large enterprises and in the public sector. In this context, the FKTU recommends corrective measures including: converting non-regular positions to permanent positions, eliminating illegal in-house subcontracting and intensifying the inspection and monitoring of employers. In its response, the Government maintains that, according to the method of calculation agreed upon by the tripartite partners, there were 6.27 million non-regular workers in 2015, showing that the proportion of non-regular workers in the country has decreased. It indicates further that the proportion of temporary workers among non-regular workers decreased from 65.7 per cent in 2011 to 65.2 per cent in 2015, while the proportion of external workers classified as indirectly employed workers has also decreased, from 20.1 per cent in 2014 to 19.7 per cent in 2016. In its observations, the KEF expresses the view that the EDTS system has not been effective in increasing regular employment, noting that regular workers in subcontracting enterprises are erroneously identified as non-regular workers. The KEF adds that, while the proportion of non-regular workers is decreasing, they still encounter exploitation in enterprises. In its reply to the observations of the social partners, the Government indicates that the EDTS should be maintained to improve the employment situation of workers, noting that it has implemented "employment improvement measures for public-sector non-regular workers" and converted non-regular workers engaged in permanent and continuous work in the public sector to regular status. The Government also seeks to amend the Act on the Protection of Dispatched Workers. In addition, the Government is continuing its efforts to address discrimination against non-regular workers and to strengthen labour inspection against deceptive or illegal worker dispatching and subcontracting. Concerning trade unions' right to request relief on behalf of its members for discrimination, the Government indicates that this is an individual right which belongs only to the party whose rights were infringed. It is taking measures to promote employment of regular workers through the revision of guidelines on fixed-term and in-house subcontracted workers to, inter alia, prohibit the signing of repeated short-term contracts and provide opportunities for skills development for the former, and guarantee reasonable wages and access to welfare facilities for the latter. ***The Committee requests the Government to communicate updated detailed information, including statistics disaggregated by sex and employment type, on the impact of the measures taken under the 2013 National Employment Strategy. It also requests the Government to provide information on the role of the social partners during the development and implementation of these measures. In addition, the Committee requests the Government to provide detailed information on the nature and extent of the planned amendments to the Act on the Protection of Dispatched Workers.***

***Employment generation and deregulation.*** The Government indicates that a tripartite agreement was reached on 15 September 2015 to address dualism in the labour market. In this context, it encourages enterprises to allocate additional funds to improve the working conditions of non-regular workers and subcontracted workers. The Government indicates that an increasing number of non-regular workers engaged in permanent and continuous work are being converted to regular status, with 74,000 non-regular workers converted to regular status from 2013 to 2015 and 15,000 more to be

converted to regular status from 2016 to 2017. The Government also indicates that the wage gap (65.5 per cent in 2015) between regular and non-regular workers has declined 3 percentage points from 2014. The Government is also improving legislation and systems, providing financial and consulting support and reinforcing labour inspection. It has strengthened sanctions against discrimination on grounds of employment type through revising the non-regular worker law and providing subsidies to convert non-regular workers into regular workers. The FKTU indicates that, despite the tripartite agreement reached on 15 September 2015, the Government submitted five bills without the approval of the social partners. It adds that the guidelines promoted by the Government make it easier to lay off workers and constitute an unfavourable change in the employment rules. The FKTU therefore asked the Government to respect the agreement and repeal the bills. Following its refusal, the workers' representatives withdrew from the agreement and announced a protest on 19 January 2016. In its reply, the Government indicates that it proposed the bills with the ruling party on 16 September 2015, taking into account the results of the discussions held at that point. On 17 November 2015, it submitted a report including the opinions of the tripartite partners and public interest members to the National Assembly. It adds that the maximum contract period for fixed-term workers may be extended by two years at the request of the workers. It adds that the maximum number of overtime hours will be reduced from 28 hours to 12 hours, as provided for in the tripartite agreement. It also indicates that the public sector has adopted a wage peak system which has enabled the hiring of 8,000 new employees over the next two years. ***The Committee requests the Government to provide information on the measures taken to reduce labour market dualism and to re-initiate consultations with the social partners in this process. It also requests the Government to continue to transmit detailed updated information on the outcome of these measures, particularly on the extent to which they have led to the creation of full, productive and lasting employment opportunities for regular and non-regular workers.***

***Youth employment.*** The FKTU indicates that 1.11 million young people are unemployed and that the rate of non-regular workers among newly employed young workers stood at 64 per cent as of August 2015. It adds that there is strong pressure on young people to take low quality jobs, increasing the rate of poor working youth from 44.3 per cent to 47.4 per cent. The FKTU indicates that, despite this fact, the Government and large companies have not taken effective measures to promote youth employment. In this context, 25.6 per cent of public institutions violate the mandatory employment quota of young people; large companies prefer non-regular workers and persuade young people to take unstable and low wage part-time jobs. In its reply, the Government indicates that the FKTU did not use the official statistics published by Statistics Korea. It adds that the youth employment rate increased from 39.7 per cent in 2013 to 43.1 per cent in June 2016 and the youth labour force participation increased from 43.2 per cent in 2013 to 48 per cent in June 2016. The Government indicates that the high tertiary education enrolment rate (70.9 per cent in 2014) has led to a high unemployment rate for highly educated youth. To create more decent jobs that these young persons want, the Government has been working to narrow gaps between workers in large companies and SMEs, and between regular and non-regular workers. The Government indicates that it offers customized training and employment support for young people having difficulty finding work, through the Employment Success Package, Employment Academy, and other programmes. Although the Government recognizes that some public institutions do not comply with their obligation to hire young people, it indicates that the youth employment rate in public institutions and local public enterprises was 4.8 per cent in 2015, above the mandatory youth employment quota of 3 per cent. The number of newly hired young employees in public institutions and local public enterprises rose from 3.5 per cent in 2013 to 4.8 per cent in 2015. ***The Committee requests the Government to continue to provide information on the various measures implemented to promote the long-term integration of young persons in the labour market, particularly with regard to educated young persons, as well as other categories of young people who encounter difficulties in finding employment. The Committee also reiterates its request to the Government to provide information on the measures taken or envisaged to promote the inclusion of young persons who are not in employment, education or training.***

***Employment of women.*** The Government indicates that it took measures in 2014 and 2016, focusing on "work-family balance" in order to promote female employment. Measures have focused on activating the maternity protection system, expanding the use of flexible work arrangements, including quality part-time work and the reinforcement of the childcare system, and re-employment support for women whose careers have been interrupted. The Government considers that, as a result of these measures, women's economic activity rate went from 49.9 per cent in 2012 to 52.9 per cent in June 2016 and the female employment rate rose from 53.5 per cent in 2012 to 56.6 per cent in 2016. ***Recalling its previous comments regarding the Workers with Family Responsibilities Convention, 1981 (No. 156), the Committee requests the Government to provide information on measures taken or envisaged to assist both female and male workers to reconcile their work and family responsibilities. The Committee requests the Government to provide updated comprehensive information on the nature and impact of measures taken to increase women's participation in the labour market, particularly in full, productive and sustainable employment.***

***Employment of older workers.*** The Government indicates that it encourages the employment of older workers by promoting the adoption of the wage peak system, expanding subsidies to institutions which support it, as well as the re-employment of older workers through customized training. The FKTU indicates that, despite the retirement age of 53 in Korea, retired employees continue to work in non-regular and part-time positions until their late sixties due to an inadequate social safety net. In its reply, the Government indicates that the retirement age stipulated by law is 60. It notes that after retiring, older workers are being re-employed in low quality jobs, and it is therefore strengthening its outplacement and re-employment services to help older workers with lifetime planning and vocational skills. ***The***

*Committee reiterates its request to the Government to communicate detailed information, including statistical data allowing it to assess the effectiveness of the various measures implemented to promote productive employment opportunities for older workers. It also requests the Government to indicate the impact of the wage peak system on older workers' employment as well as the number of persons placed in employment as a result of the customized training.*

*Migrant workers. Recalling its previous comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee requests the Government to provide information on the situation of migrant workers in the labour market.*

*Article 3. Participation of the social partners.* The Government indicates that, in August 2013, a “tripartite joint implementation monitoring group” was formed at the Economic and Social Development Commission to monitor the implementation of the Tripartite Jobs Pact for a year. It adds that, in October 2013, it designated 14 regional human resources development councils (HRD councils) in major cities and provinces. In addition, it selected 29 joint (professional) education and training institutions providing education and training to generate human resources tailored to regional needs, starting in March 2014. The training was provided to 54,000 people in 2015 and was expected to reach 55,000 people in 2016. The FKTU indicates that only representatives from local governments or large businesses are entitled to chair these committees. It adds that a majority of committee members are employers' representatives, whereas only a few are drawn from labour. In its reply, the Government indicates that people from labour circles can also represent regional HRD councils. It adds that, the Gyeonggi Regional HRD Council is currently being co-chaired by a person drawn from labour, and that every regional HRD council has at least one member from labour. *The Committee requests the Government to continue to provide information on the implementation of the Tripartite Jobs Pact. It also requests the Government to communicate information regarding consultations with the social partners on the matters covered by the Convention, as well as on consultations with representatives of the persons affected by employment policy measures, and representatives of workers in non-standard forms of employment.*

## Libya

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. Consultations with the social partners.* For a number of years, the Committee has been requesting the Government to provide information on the manner in which employment objectives are achieved, as well as on the situation and trends of the labour market. The Committee notes the Government's indication that, since the adoption and application of the employment policy in 2004 by the Planning Council, several amendments had to be made to the policy in view of developments in the country in recent years, with the aim of bringing the policy into conformity with the reality on the ground and achieve full employment. The Government indicates that a committee was commissioned in 2012 to modify the labour market strategy. It adds that the proposed strategy focuses on several pillars, which include: measures to combat unemployment resulting from the halting of development projects due to the war; education and training measures to meet the needs of the labour market; and measures focusing on the informal economy and the participation of migrants in labour-intensive activities. The Government points out that, due to the war, companies have left the country and the number of young persons with disabilities has increased. In addition, the Government reports that irregular migration has increased dramatically, leading to growing competition with the national labour force and impinging negatively on the labour market. The Committee notes that the most recent statistics provided by the Government are from 2012. For example, the Government indicates that the number of qualified jobseekers increased from 39,880 in 2007 to 149,808 in 2012, especially among women (from 26,009 to 94,379). The Government indicates that upon the adoption of the labour market strategy, it would inform the Committee of the policies adopted targeting full employment. *While acknowledging the complexity of the situation prevailing on the ground, the Committee hopes that the Government will soon be in a position to provide updated and detailed information on the envisaged labour market strategy and the manner in which employment objectives are achieved, as well as up-to-date statistical data on the situation, level and trends in employment, unemployment and underemployment, disaggregated by sex and age. It also requests the Government to provide information on the involvement of the social partners, in accordance with Article 3 of the Convention, which requires that their views and experiences be fully taken into account when designing and implementing an active employment policy.*

*Article 2. Labour market information.* The Committee recalls its previous comments stressing the importance of establishing a system for the collection and analysis of labour market data to enable an assessment and review of measures taken to attain the objectives of the Convention. *The Committee therefore reiterates its request that the Government provide information on any progress achieved in this regard, and invites the Government to avail itself of the assistance of the Office, should it wish to do so.*

*Promotion of small and medium-sized enterprises. The Committee reiterates its request that the Government provide information in its next report on the measures adopted to promote the establishment and development of small and medium-sized enterprises, taking into account the guidance set out in paragraph 5 of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).*

*Workers vulnerable to decent work deficits. The Committee requests the Government to provide information, including statistical data disaggregated by age and sex, on the impact of measures, including vocational education and training measures, to increase the labour market participation rate of persons vulnerable to decent work deficits, including women, young persons, persons with disabilities, migrant workers, workers in rural areas and those in the informal economy.*

## Madagascar

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* In its previous comments, the Committee expressed the hope that the Government would soon be in a position to report progress in the formulation and implementation of an employment policy. In this regard, the Committee notes with *interest* the Government's indications that Act No. 2015-040 of 9 December 2015 determining the orientation of the National Employment and Vocational Training Policy (PNEFP) has been adopted and is the subject of an awareness-raising campaign. It adds that the National Plan of Action for Employment and Training (PANEF) has been replaced by the Operational Plan of Action (PAO), which contains the various policy priorities implemented by the PNEFP. The Government indicates that the objective of the PNEFP, together with the implementation of the General State Policy (PGE), the National Development Plan (PND) and the Sustainable Development Objective (ODD), is to eradicate unemployment and underemployment by 2020 through the creation of sufficient numbers of formal jobs to absorb jobseekers. The PNEFP also has the goal of establishing a relevant information system on the labour market and vocational training and of designing and introducing a harmonized system of certification and training. The Government adds that four employment fairs were organized in December 2015 and that 1,119 young school-leavers were trained and integrated into small-scale rural occupations within the context of a partnership with UNESCO. Also in relation to employment promotion, the Government reports two "Rapid Results" initiatives of the Ministry of Employment, Technical Education and Vocational Training (MEETFP), which it indicates have been fully achieved. The first initiative focused on the matching of training and employment in 12 growth sectors. The second established a vocational training centre in the town of Andranofeno Sud with a view to employment generation. The centre provides training to around 100 students in six main areas: tourism, hotels and catering, agriculture and livestock, wood art and trades, automobile mechanics, construction and public works. The Government adds that 1,058 rural young school-leavers have been trained in 15 types of trades in several regions and that 59 persons with disabilities were trained by the National Training Centre for Persons with Disabilities (CNFPSSH) in the regions of Analanjirofo and Sava. The National Employment and Training Observatory has been transformed into the National Employment and Training Office. With regard to the upgrading of technical education and vocational training, the Government reports the rehabilitation in 2015 of five technical and vocational schools, 60 classrooms and the accreditation of 97 public and private technical establishments. The Government adds that four vocational training centres for women are now operational. *The Committee requests the Government to continue providing information on any developments relating to the implementation of the National Employment and Vocational Training Policy, as well as on its impact on the employment rate and the reduction of unemployment, and on the transition from the informal economy to the formal economy. The Committee once again requests the Government to provide information to enable it to examine the manner in which the main components of economic policy, in such areas as monetary, budgetary, trade or regional development policies, contribute "within the framework of a coordinated economic and social policy" to the achievement of the employment objectives set out in the Convention. The Committee also requests the Government to provide updated information on the measures adopted or envisaged to create lasting employment, reduce underemployment and combat poverty, particularly for specific categories of workers, such as women, young people, persons with disabilities, rural workers and workers in the informal economy. In this regard, it requests the Government to provide further information on the types of training provided by the CNFPSSH to persons with disabilities.*

*Coordination of education and training policy with employment policy.* The Committee notes with *interest* that, under the terms of section 2 of the PNEFP, its objective is the implementation of a policy for massive job creation and the promotion of vocational training. Section 10 of the PNEFP specifies that the policy includes in particular activities for employment creation, enterprise support, labour market mediation, the direct promotion of employment for young persons, women and vulnerable categories, the promotion of decent work and the extension of social security. In section 5, it establishes the right to training and qualifications irrespective of a person's individual and social situation and educational level. The Committee further notes that section 46 calls for the creation of partnership between the State, territorial communities and technical and financial partners with a view to launching and financing employment promotion action for young persons, women and disadvantaged categories of workers. The Government indicates that the action taken for youth employment includes, on the one hand, the promotion of self-employment and traditional or informal enterprises and, on the other, support for integration into enterprises and traditional activities. The objectives of this action include support for young persons in their vocational projects and the reinforcement of financing capacities. The Ministry provides training to young persons with a view to promoting self-employment and the creation of small and medium-sized enterprises and industry. During the course of 2015 and the first half of 2016, training of this type was provided to 1,436 young persons from six regions. *The Committee requests the Government to continue providing*

*information on the results of the action taken to ensure the coordination of vocational education and training policy with employment policy. It once again requests the Government to indicate the results achieved through the implementation of these programmes in terms of the access of qualified young persons to lasting employment. The Committee further requests the Government to indicate the impact of the measures taken to promote the creation of small and medium-sized enterprises.*

*Compilation and use of employment data.* The Government indicates that the Periodic Household Survey was commenced and then replaced by the global population census in light of the State's priorities due to the significant increase in the population. However, it reports the preparation of a partnership project with the International Labour Office with a view to establishing a system of reliable databases on employment. The National Employment and Training Office will be responsible for the management of the system. The Government adds that in 2016 the MEETFP started to establish Regional Employment Services (SRIE) in Regional Departments, and that there are now SRIEs in nine Regional Departments and that they are responsible for managing the regional employment information system, which involves matching young jobseekers and enterprises. ***The Committee requests the Government to provide information on the progress achieved by the project in the establishment of a system of reliable databases on employment. It also requests the Government to provide further information on the impact of the SRIEs in relation to the compilation and use of employment data.***

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government indicates that a National Agreement on Employment and Vocational Training was concluded with the social partners in October 2015 and with enterprise groups in the five priority areas in November 2015. The Government also reports the conclusion of two other agreements including the social partners, namely the agreement on the financing of the Technical Support Team for the PNEFP and the agreement on the fund for its implementation. ***The Committee requests the Government to continue providing updated information on the consultations held with the representatives of the social partners on the subjects covered by the Convention. The Committee once again requests the Government to provide detailed information on the consultations held with the representatives of the most disadvantaged categories of the population, and particularly with the representatives of workers in rural areas and the informal economy.***

## Mozambique

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1996)**

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* The Committee notes with ***interest*** that following ILO technical assistance, Mozambique adopted a National Employment Policy (NEP) in 2016. The NEP's principle objectives are: to promote job creation, entrepreneurship and sustainable employment to contribute towards the economic and social development of the country and the well-being of the population. The NEP includes, among its main targets, the creation of new jobs (particularly in the private sector); implementation of programmes contributing to increased productivity, competitiveness and the development of human capital; establishment of the institutional conditions necessary to improve the functioning of the labour market; and ensuring the harmonization of sectoral policies as well as an institutional framework for employment and self-employment. The Committee notes the publication of the Fourth National Poverty Assessment in 2016, which places the national poverty rates in the range of about 41 per cent to 45 per cent of the population (representing between 10.5 and 11.3 million extremely poor people). The report also states that, due to the concentration of Mozambique's workforce in subsistence agriculture and low productivity informal enterprises, the country is characterized by high levels of individual and household vulnerability, particularly in rural zones in the north and central areas of the country. ***The Committee requests the Government to provide comprehensive information on the results achieved and the challenges encountered in attaining the objectives established in the NEP, particularly on the outcome of the programmes established to stimulate growth and economic development, raise working and living standards, respond to labour market needs and address unemployment and underemployment.***

*Article 2(a). Collection and use of labour market information.* The Committee notes the development of the Household Survey by the National Statistics Institute (INE) 2014–15. It observes that, according to statistical information included in the Employment Policy report, in 2015 the unemployment rate was 25.3 per cent. The main source of employment was self-employment (73.1 per cent of the economically active population (EAP)), while wage employment represented 20 per cent of the EAP. In addition, 15 per cent of the EAP was employed as unpaid family workers (8.5 per cent were men and 21 per cent were women), 7.3 per cent were temporary workers and 9 per cent were casual workers. The Committee also notes that the NEP calls for the improvement of the country's labour market information system. ***The Committee requests the Government to provide up-to-date information, including statistical data disaggregated by economic sector, sex and age, on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country.***

*Youth employment.* The Committee notes that the NEP's principal targets include promoting investment to create employment for young women and men and stimulating professional training and labour mobility for young people. To achieve these objectives the NEP sets out lines of action that call for promoting youth entrepreneurship through training programmes, particularly in rural areas, as well as increasing access to credit; investing in youth training and increasing

the number of traineeships. The Government indicates that in 2015 awareness-raising conferences on Pre-occupational Traineeship Regulations were held at the national and provincial levels to encourage enterprises to engage trainees. In addition, the Government refers to the establishment of financial programmes to support entrepreneurial initiatives developed by young people. ***The Committee requests the Government to provide detailed information on the manner in which the implementation of the NEP, the Pre-occupational Traineeship Regulations and other programmes providing education and vocational training for young persons or supporting entrepreneurship of young women and men have increased access of young people to full, productive and sustainable employment.***

***Women's employment.*** The Committee notes that the NEP calls for strengthened initiatives promoting gender equality in economic and social development programmes. The lines of action set out in the NEP include: promoting women's employment, including in traditionally male occupations; prioritizing education and vocational training with a view to promoting equal employment opportunities for women and men; and eliminating gender discrimination in access to employment. ***The Committee requests the Government to provide updated detailed information on the results of the specific measures adopted and implemented under the NEP to promote equal employment and income opportunities for women and men and to eliminate the gender gap in education, particularly in relation to literacy rates.***

***Education and vocational training.*** The Committee previously requested the Government to provide information on the results achieved under the Employment and Vocational Training Strategy (EEFP) 2006–15 and the Integrated Programme for Vocational Education Reform (PIREP). The Committee notes from the Employment Policy report that access to secondary education is limited and the completion rate remains very low at 13 per cent. The report adds that the relevance of education and vocational training to the needs of the labour market is also very low. The Government indicates that reforms have been introduced in the areas of education and vocational training to address these challenges. In particular, the Government refers to the adoption of the Vocational Education Law in the framework of the PIREP, which provides that the National Authority for Vocational Training, whose executive board includes representatives of the social partners, is the body responsible for the Vocational Training System. Moreover, vocational training centres and technical institutes in the country have been renovated. Finally, the Government indicates that in 2014, in the framework of the EEFP, 2,490,672 jobs (464,413 for women) were created and 633,971 people participated in the training (219,260 women). ***The Committee requests the Government to continue to provide information, including statistical information disaggregated by age and sex, on the impact of the measures taken in the area of education and vocational training and on their relationship to prospective employment opportunities.***

***Article 3. Consultations with the social partners.*** The Committee notes that, prior to its adoption, the NEP was examined by the social partners within the Labour Advisory Commission in May 2016. Moreover, the NEP establishes that the Labour Advisory Commission and the Development Observatory are the bodies entrusted with the responsibility of following up on the implementation of the NEP. ***The Committee requests the Government to continue to provide detailed information on the involvement of the social partners in the promotion and implementation of the NEP.***

## New Zealand

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1965)***

The Committee notes the observations of Business New Zealand and of the New Zealand Council of Trade Unions (NZCTU), communicated with the Government's report, and the Government's responses thereto.

***Articles 1 and 2 of the Convention. Active labour market measures.*** In its previous comments, the Committee invited the Government to provide information on the impact of measures implemented under the Business Growth Agenda (BGA) as well as of other active labour market measures. The Committee notes the detailed information provided in this regard. The Government, committed to growing the economy and establishing jobs for all New Zealanders, refers to the results of several initiatives and policy reforms taken within the framework of the BGA. The Committee also notes the results related to the Skilled and Safe Workplaces work stream of the BGA, including getting people off benefits and into employment, delivering skills to meet industry demands and supporting the development of a skilled workforce through the Maori and Pasifika Trades Training (MPTT). The Government further indicates that it is making continuous efforts in ensuring tertiary education, reviewing migration settings, maximizing the employment of New Zealanders and developing an effective and efficient occupational health and safety system that is supported by industry and workplaces. With respect to maximizing the employment of New Zealanders, the Government indicates that it is working with employers to co-develop sector-owned initiatives to address skills and employment issues via the Sector Workforce Engagement Programme (SWEP). The NZCTU indicates that the Government has failed to involve the NZCTU or other representatives of workers' organizations in the development and roll-out of the SWEP. Furthermore, the Government indicates that it aims to attract further investment through the Regional Growth Programme. To this end, it has adopted the Pacific Economic Strategy 2015–21 which helps Pacific people contribute to and share in New Zealand's economic success by stimulating their economic participation. The NZCTU adds that, while some of these initiatives are useful, the implementation of active labour market policies remains scant and patchy. It also observes a decrease in the percentage of people who access any form of benefit after losing their jobs. This is primarily because they are disqualified on the basis of spousal income which makes them less likely to receive active labour market policy support. In its response, the Government indicates that, through its employment schemes, job search and work placement services are provided to all

New Zealanders to the level they need. The Government explains that the logic behind making high-spousal income an exclusionary factor for financial assistance is to ensure that people look to their own resources before seeking assistance from the State. ***The Committee requests the Government to continue to provide information on the effectiveness and impact of the active labour market measures adopted, as well as on the consultations held with the social partners with respect to the formulation, implementation and monitoring of such measures. The Committee also requests the Government to provide information on the consultations held with representatives of persons affected by the measures taken.***

***Employment trends.*** The Committee notes that, according to the Statistics New Zealand Household Labour Force Survey, the labour force participation rate rose from 68.7 per cent in 2015 to 69.8 per cent in 2016, with labour force participation for men and women reaching 75.3 per cent and 64.5 per cent, respectively. With regard to employment measures enacted to meet the labour market needs of women, the Government reiterates its commitment to help women fully participate in society and the economy through the Ministry of Women's work programme and other initiatives. ***The Committee requests the Government to continue to provide statistics concerning the size and distribution of the labour force, disaggregated by age and sex, as well as information on the employment situation and trends in employment, unemployment and underemployment.***

***Persons with disabilities.*** The Committee notes the information provided on several initiatives aimed at promoting employment for persons with disabilities, including vocational guidance and training services. It notes that a Disability Action Plan 2014–18 was developed using a collaborative approach that involved government agencies working closely with representative organizations of persons with disabilities. Business New Zealand expresses concern about the government funding available, which has proved inadequate to cover the costs involved in finding jobs for persons with disabilities. The Government indicates that it has been working to improve both the universal and specialist services available to assist persons with disabilities to achieve sustainable employment. ***The Committee requests the Government to provide updated, detailed information on the impact of employment measures targeting persons with disabilities, including reasonable accommodation measures, to assist them in obtaining sustainable employment on the open labour market. It also requests the Government to provide information on improvements made to the services available to persons with disabilities to assist them in finding employment.***

***Youth employment.*** The Committee notes the various initiatives targeting youth, including training and employment measures. The Government indicates that, through the Building Skilled and Safe Workplaces (SSW) programme of the BGA, it has raised the bar on the educational achievement of young New Zealanders and has supported them into education, training or employment. This has included increasing the participation of young Maori and Pasifika in the workforce to the same level as the rest of the population. Furthermore, the Pacific Employment Support Services (PESS) was developed to assist Pacific youth who were not in education, employment, or training to achieve real economic independence through learning skills and preparing them for sustainable employment. Outcomes for young people are positive, and the percentage of 15–24 year olds not in employment, education or training had declined to 10.9 per cent in the December 2015 quarter, the lowest since September 2008. Business New Zealand observes that, while the Government is making real efforts to ensure young people have the skills to enter into gainful employment, there have been expressions of employer concern that many training efforts, apprenticeship training included, are not adequate to meet workplace needs. ***The Committee requests the Government to continue to provide comprehensive information on the effectiveness and impact of employment measures targeting youth, including young Maori and Pasifika.***

***Education and training policies.*** The Committee notes the information provided on the results achieved by education and training programmes implemented under, inter alia, the Tertiary Education Strategy 2014–19, the Secondary-Tertiary Programmes, industry-training-related initiatives and the MPTT. The Government also refers to the Reboot Scheme, which has increased the apprenticeship enrolments and the creation of three ICT Graduate Schools. Business New Zealand is of the view that, in order for the initiatives to be sufficiently effective, they would need to achieve greater connectedness, integration and cooperation. ***The Committee requests the Government to continue to provide information, including statistics disaggregated by age and sex, on the impact of education and training measures, including apprenticeship programmes, in terms of obtaining lasting employment for young persons and other persons vulnerable to decent work deficits. The Committee also requests the Government to provide further information on the coordination of education and training policies with prospective employment opportunities, and on the consultations held with the social partners in this regard.***

***Workplace productivity and entrepreneurship.*** The Committee notes that the Productivity Commission is continuing its work in looking at issues related to productivity in the services sector. The BGA encompasses actions and initiatives that support areas needed by businesses to succeed, grow and create jobs. The NZCTU indicates that New Zealand has a very poor productivity record relative to other OECD countries and believes that the Government has been largely unsuccessful in addressing New Zealand's low productivity growth. The Government provides information on several measures taken to create employment through the promotion of small and medium-sized enterprises (SMEs). The first such measure is the Health and Safety at Work Act 2015, which aims to address the potential for disproportionately higher costs in managing the risk to health and safety of workers, which the Government identifies as a potential constraint for SMEs to achieve decent employment. The Government believes that ensuring health and safety of workers and workplaces is important for productivity. Furthermore, the Government indicates that the Employment Relations Act,

that came into effect in March 2015, and other initiatives were adopted aiming to boost employment through supporting SMEs. *The Committee requests the Government to continue to provide information on the results obtained in increasing workplace productivity in terms of employment generation. The Government is also requested to provide updated information on the measures taken or envisaged to create employment through the promotion of small and medium-sized enterprises.*

## Nigeria

### **Employment Service Convention, 1948 (No. 88) (ratification: 1961)**

*Articles 1 and 3 of the Convention. Contribution of the employment service to employment promotion.* In its previous comments, the Committee invited the Government to provide information on the impact of the measures taken to ensure that sufficient employment offices are established to meet the specific needs of employers and jobseekers in each of the geographical areas of the country. The Committee also invited the Government to provide information on the National Employment Policy (NEP) and other measures taken to build institutions for the realization of full employment. It also encouraged the Government and the social partners to consider the possibility of ratifying the Employment Policy Convention, 1964 (No. 122), a significant governance instrument. The Government indicates in its report that the Federal Ministry of Labour and Employment has a network of 45 employment exchanges and 17 professional and executive registries that are strategically located in city centres where jobseekers can easily access employment services. It adds that district labour offices are also located in states with a high concentration of industries. According to the Bulletin of Labour Statistics, in 2014 there were 2,254 jobseekers registered with employment exchanges, with 829 vacancies notified and 916 individuals placed in employment. The Government indicates that the final draft of the NEP endorsed by the Government in 2002 has been validated by the social partners and is pending approval by the federal Government. *The Committee requests the Government to communicate information on the current status of the National Employment Policy and to transmit a copy as soon as it is adopted. It also requests the Government to provide detailed information on the nature and scope of the activities carried out by the employment service to ensure the best possible organization of the labour market, as required by Article 1 of the Convention. The Government is also requested to provide statistical information on the number and location of employment exchanges and professional and executive registries established, the number of applications for employment received, vacancies notified and persons placed in employment by such offices.*

*Articles 4 and 5. Consultations with the social partners. Referring to its previous comments, the Committee once again requests the Government to provide information on the consultations held in the National Labour Advisory Board on the organization and operation of the employment exchanges and the professional and executive registries and the development of employment service policies and programmes.*

*Article 6. Organization of the employment service.* In response to the Committee's previous comments, the Government indicates that the employment exchanges and the professional and executive registries perform a range of functions free of charge. These include: the registration of jobseekers and their placement in employment; provision of vocational career guidance and counselling; collection of labour market information from employers and their dissemination of this information to the public; collection and analysis of employment and unemployment statistics for economic planning purposes; and provision of guidance and counselling for potential young school-leavers. *The Committee requests the Government to provide updated information on the organization and activities of the employment exchanges, professional and executive registries and any other services engaged in giving effect to the Convention, such as the district labour offices and the manner in which they ensure the effective placement of jobseekers.*

*Article 7. Activities of the employment service.* The Government indicates that the public employment service is open to all categories of jobseekers, and provides services to vulnerable groups of jobseekers, such as those with disabilities. It adds that the public employment service provides proper counselling to persons with disabilities on career choices, and advises employers not to discriminate against persons with disabilities and to reserve a certain percentage of employment for them. The Government also trains and equips persons with disabilities to be self-employed through various programmes of the National Directorate of Employment. In its 1998 General Survey on Vocational Rehabilitation and Employment of Disabled Persons, paragraph 88, the Committee stressed the importance of vocational guidance in opening a broad range of occupations to persons with disabilities free of considerations based on stereotypes or outdated conceptions according to which specific trades or occupations are supposedly reserved for specified categories of persons. *The Committee once again requests the Government to provide information on the results of the measures taken by the employment service concerning various occupations and industries. It also requests the Government to provide detailed information on the nature of the career choice counselling given to persons with disabilities. The Committee is further requested to provide information on the nature and scope of the programmes implemented by the National Directorate of Employment to promote employment and self-employment opportunities for persons with disabilities and on the impact of such programmes, indicating the number of persons benefiting from these programmes.*

*Article 8. Measures to assist young persons.* The Government indicates that the Employment Exchanges have been upgraded in 12 states of the country with internet facilities linked to the National Electronic Labour Exchange

(NELEX). The Committee notes that the Government provides no information on specific measures aimed at assisting young persons in finding employment. ***Referring to its previous comments, the Committee reiterates its request that the Government provide information on the impact of measures taken or envisaged by the employment service to assist young persons in finding suitable employment. It also requests the Government to provide information on the impact of the National Directorate of Employment and the National Poverty Eradication Programme measures aimed at assisting young persons to access employment.***

***Article 10. Measures to encourage full use of employment service facilities. The Committee reiterates its previous request that the Government provide information on the measures taken or envisaged by the employment service, with the cooperation of the social partners, to encourage the full use of employment service facilities.***

***Article 11. Cooperation between public and private employment agencies not conducted with a view to profit.*** The Government indicates that annual private employment agency workshops have been held in 2014, 2015 and 2016, with the aim of further strengthening existing cooperation between the public employment service and private employment agencies. It adds that the next annual workshop is planned for the third quarter of 2017. The workshops provide a platform for discussions and exchanges of ideas on fair recruitment, as well as on measures to ensure compliance with government regulations. ***The Committee requests the Government to continue to provide information on the measures taken to ensure effective cooperation between the public employment service and private employment agencies not conducted with a view to profit, including information on the content and outcome of the annual workshops on private employment agencies.***

## Peru

### ***Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1986)***

The Committee notes the observations of the Autonomous Workers' Confederation of Peru (CATP), received on 14 September 2017. ***The Committee requests the Government to send its comments in this regard.***

***Articles 2 and 3 of the Convention. Implementation of vocational rehabilitation and employment policies for persons with disabilities.*** In reply to the Committee's previous comments, the Government refers once again in its report to the inclusion of the minimum 5 per cent quota of workers with disabilities in the public sector and 3 per cent in private sector companies employing more than 50 workers, and also the 15 per cent weighting included in the final score of selection processes for public competitions to promote the access of persons with disabilities to the labour market. The Committee notes the information supplied by the Government on the impact of the abovementioned measures. In particular, the Government indicates that, according to statistical information sent by the National Civil Service Authority (SERVIR), as of April 2017 there were 1,367 public servants with disabilities registered in the electronic payroll of the Ministry of Labour, which represents 0.1 per cent of all public sector workers. The Government adds that only 34 units in the public sector meet the 5 per cent recruitment quota for persons with disabilities, and most of these are municipalities with small numbers of workers. The Government indicates that in view of the difficulties encountered by public entities in fulfilling the abovementioned employment quota, the National Council for the Integration of Persons with Disabilities (CONADIS), in coordination with SERVIR, has been drawing up a proposal to amend the regulations implementing the General Act on persons with disabilities (No. 29973), with the aim of establishing clearly and precisely the procedure to be followed by state institutions to fulfil the abovementioned quota. Accordingly, the draft provides for the establishment of mechanisms for the dissemination of recruitment notices, the running of an employment exchange and the development of a database for persons with disabilities, detailing their academic training, knowledge and experience. However, the Committee notes that the CATP highlights in its observations the lack of adequate resources and inspections to ensure that the compulsory quotas established by Act No. 29973 are fulfilled. In this regard, the CATP indicates that the transfer of public sector inspection duties from the labour inspectorate to SERVIR has reduced inspection capacities, since SERVIR does not have the precise, centralized and up-to-date information to allow ongoing monitoring of compliance with the employment quota for persons with disabilities in the public sector. Moreover, the CATP indicates that most persons with disabilities in Peru have few educational qualifications and a high level of economic inactivity, and the majority work in the informal economy. It observes that the unemployment rate for persons with disabilities (12.1 per cent) is nearly four times higher than that of the population as a whole (3.7 per cent), and that eight out of ten enterprises do not hire persons with disabilities. The CATP affirms that such factors stem from the inadequate and patchy evaluation of the policies adopted to promote the access of persons with disabilities to the labour market. As regards the vocational retraining and rehabilitation services for persons with disabilities established under Act No. 29973, the CATP indicates that, according to information from CONADIS, only 61 per cent of persons with disabilities have access to such services. ***The Committee requests the Government to provide up-to-date information on progress made regarding the adoption of the proposed amendments to Act No. 29973 aimed at facilitating compliance with the employment quota for persons with disabilities in the public sector. The Committee also requests the Government to continue sending up-to-date information on the impact of the measures adopted to promote job opportunities for persons with disabilities, including of a mental or intellectual nature, in the open labour market, in both the public and private sectors. The Committee also requests the Government once again to send summaries of studies or evaluations relating to rehabilitation and employment policies***

**and programmes for persons with disabilities, and information on other up-to-date indicators of the results achieved by the legislative measures and policies adopted in favour of persons with disabilities.**

*Article 5. Consultations with representative employers' and workers' organizations.* The CATP indicates in its observations that the consultation mechanisms established in Act No. 29973 do not guarantee adequate consultations with the organizations of persons with disabilities, since the consultations only occur through CONADIS. The CATP affirms that CONADIS only represents a small number of persons with disabilities. It also considers inadequate the pre-publication in accessible formats on the website of each entity of the regulatory proposals regarding job quotas and reasonable accommodation for persons with disabilities in the private sector, and also the holding of workshops with the objective that the persons concerned can make their contributions and observations. The CATP states that these procedures do not enable the needs of persons with disabilities to be known. ***The Committee requests the Government to provide detailed information on the manner in which the representative organizations of employers and workers and also the representative organizations of persons with disabilities are consulted on the application and periodic revision of national policy for the occupational rehabilitation of persons with disabilities.***

*Article 8. Services in rural areas and remote communities.* For several years, the Committee has been asking the Government to provide information on the measures planned for the establishment and development of vocational rehabilitation and employment services for persons with disabilities in rural areas and remote communities. The Committee observes that the Government has still not replied to this request. ***The Committee urges the Government to provide information in this regard.***

*Article 9. Training of qualified staff.* For several years, the Committee has been asking the Government to provide information on the training of suitably qualified staff for the vocational guidance, vocational training, placement and employment of persons with disabilities. The Committee observes that the Government has still not replied to this request. ***The Committee urges the Government to provide information in this regard.***

***[The Government is requested to send a detailed report in 2018.]***

## Sao Tome and Principe

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)**

*Articles 2 and 3 of the Convention. Implementation of a national policy for the vocational rehabilitation and employment of persons with disabilities.* In its previous comments, the Committee requested the Government to provide the text of the Basic Act for Persons with Disabilities and to provide information on the provisions of the Labour Code directly related to the promotion of employment for persons with disabilities. In this respect, the Committee notes with **interest** the entry into force of the Basic Act for Persons with Disabilities No. 7/2012. In particular, it notes that section 17 establishes the obligation of the State, inter alia, to guarantee the right to work of persons with disabilities and develop measures with all government institutions at all levels to ensure equality of opportunity and treatment for persons with disabilities. It also notes that section 27 states that the Government shall give priority to the formulation of a policy on employment, vocational training and social security for persons with disabilities. Under this provision, the government body responsible for implementing the policy on employment and vocational training for persons with disabilities is obliged, inter alia, to: (i) develop special programmes with a view to promoting self-employment; (ii) implement the Initial Employment Act; (iii) ensure quality vocational training for persons with disabilities; (iv) adapt posts for persons with disabilities; (v) provide vocational training for persons with disabilities in vocational training centres, vocational rehabilitation centres and similar and related institutions; and (vi) guarantee mandatory social protection for all persons with disabilities, in accordance with the Basic Act on Social Protection. The Committee further notes that the second paragraph of section 27 establishes a quota system for the employment of persons with disabilities in the public and private sectors. The Government reports that progress has been observed in the past few years thanks to the adoption of Act No. 7/2012, particularly in relation to the construction of access ramps for persons with disabilities, as all new buildings have been required to have such ramps since the Act entered into force. Moreover, the Government adds that persons with disabilities have their own association through which they can assert their rights. ***The Committee requests the Government to provide specific and detailed information on the application of the Basic Act for Persons with Disabilities No. 7/2012, indicating the government body responsible for implementing the policy on employment and vocational training for persons with disabilities, and the impact of the Act on the inclusion of persons with disabilities in the open labour market. The Committee also requests the Government to provide statistical data on the labour market integration of persons with disabilities, disaggregated, where possible, by sex, age, type of disability, economic sector and region. Lastly, the Committee requests the Government to provide a copy of the national employment policy once it has been adopted.***

*Article 5. Consultations with the social partners.* The Government indicates that its report was forwarded to the representative organizations of employers and workers, which agreed with the content. However, the Government does not provide additional information on the consultations with the social partners required under *Article 5*. ***The Committee once again requests the Government to provide information on the manner in which the social partners have been consulted in the formulation and implementation of a national policy for the vocational rehabilitation and employment***

*of persons with disabilities, and to provide information on the consultations held with the organizations of and for persons with disabilities.*

*Article 7. Accessible employment services for persons with disabilities.* In its previous comments, the Committee requested the Government to provide information on employment, vocational guidance and vocational training services designed to enable persons with disabilities to have access to and advance in employment. The Government states that both the Constitution and Act No. 7/2012 require all educational establishments to provide education to persons with disabilities. The Government adds that all the existing vocational training centres in the country have their own structures and that the persons who use their services receive, without any discrimination, vocational rehabilitation. **The Committee requests the Government to provide detailed information on the number and geographical distribution in the country of employment services available to persons with disabilities, as well as the results of the vocational guidance and vocational training measures that have been adopted to enable persons with disabilities to have access to and advance in employment. The Committee requests the Government to provide statistical data in this respect, disaggregated, where possible, by sex and age.**

*Article 8. Access to services in rural areas and remote communities.* The Committee notes that the Government does not provide any information in this regard. **The Committee once again requests the Government to provide information on the employment, vocational guidance and vocational training services made available to persons with disabilities living in rural areas and remote communities.**

*Article 9. Training of qualified staff.* The Committee notes that the Government does not provide any information in this regard. **The Committee once again requests the Government to provide information on the measures adopted to ensure the availability of qualified vocational rehabilitation staff.**

## Sierra Leone

### **Employment Service Convention, 1948 (No. 88) (ratification: 1961)**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2009. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Contribution of the employment service to employment promotion. ILO technical assistance.* The Committee previously noted the Government's statement, contained in a report received in June 2004, indicating that the legislation on employment services has been included on the agenda of the Joint Advisory Commission for discussion. It was the Government's intention to provide a new mandate to employment services so that they are transformed into dynamic labour market information centres. The new employment services will have to cover not only urban centres but also rural areas and ensure the provision of information, planning and the application of employment policies throughout the country. The Government also stated that ILO technical assistance is required to achieve its objectives. The Committee welcomed the fact that the Government was proposing to strengthen employment services. It also recalled that the Office provided support for programmes for the generation of employment opportunities by strengthening employment services for young persons. **The Committee hopes that the Government will be in a position to describe in its next report the manner in which the employment services reforms have contributed to securing their essential duty, which is to ensure "the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources" (Article 1 of the Convention), in cooperation with the social partners (Articles 4 and 5). In this respect, the Committee would be grateful if the Government would provide the statistical information that has been compiled concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices (Part IV of the report form).**

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

## Spain

### **Employment Service Convention, 1948 (No. 88) (ratification: 1960)**

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 and 17 August 2017, respectively. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), included in the Government's report, supported by the International Organisation of Employers (IOE) in its communication received on 1 September 2017. It also notes the Government's replies to those observations, included in its report.

*Article 1 of the Convention. Contribution of the employment service to employment promotion.* The Committee notes the adoption of the consolidated text of the Employment Act, adopted by Royal Legislative Decree No. 3/2015 of 23 October 2015, which establishes the following instruments for the coordination of the National Employment System: the Spanish employment activation strategy, the annual employment policy plans and public employment services information system. Section 2 of the Employment Act includes among its employment policy objectives the adoption of an approach to prevent unemployment through training activities which enable workers to adapt their vocational skills to the labour market. It also seeks to provide individualized services to help the economically active population to enter, remain and progress within the labour market, and to assist enterprises in improving their competitiveness. In this regard,

the Government refers, in its report, to the adoption of the Annual Employment Policy Plan (PAPE 2016) which specifies the objectives set out in the Spanish Employment Activation Strategy 2014–2016 and outlines the initiatives to be rolled out for the employment services in 2016. The Government adds that the PAPE 2016 is based on six target areas, the sixth of which refers specifically to the improvement of the institutional framework of the national employment services. This target area includes the following structural objectives to: improve the management, cooperation, coordination and communication of the national employment services as well as the quality of the services; boost the evaluation, innovation and modernization of these services; and promote public–private collaboration. The Government indicates that the number of active job offers within the framework of the single gateway for employment and self-employment has increased. In September 2014, the number of active job offers stood at 28,047, with a total of 109,002 posts, while in April 2017, there were 37,900 active offers, corresponding to 134,200 posts. The Government also indicates that, according to data from the Ministry of Education and Social Security, in April 2017, the number of registered unemployed persons was 3,702,317, the lowest in the past seven years. It adds that full-time permanent procurement rose by 20.7 per cent year on year, while temporary procurement rose by 14.5 per cent. The Committee nonetheless notes that, in their observations, the UGT and the CCOO express their concern about the decrease in the budget for the application of the active employment policies, which they consider has led to a weakening of the public employment services. In particular, the CCOO indicates that the budget cuts have led to a significant reduction in the number of staff of the public employment services, predominantly in employment advisers, who play a key role in reintegrating people into the labour market, especially the long-term unemployed. The CCOO also indicates that there are problems with the design and lack of evaluation of the programmes of the active employment policies, and shortcomings in coordination among the autonomous communities. In this respect, the CCOO requests that the Government carry out an evaluation of the efficiency of the public employment services, at the levels of the State and autonomous communities, with a view to determining the effectiveness of the measures taken and the challenges identified, particularly with regard to the reintegration into the labour market of young persons and the long-term unemployed. Lastly, the CCOO indicates that the rate of coverage of unemployment benefits fell from 78.4 per cent of unemployed persons in 2010 to 53.75 per cent in April 2017. ***The Committee requests the Government to continue providing updated information, including statistics disaggregated by sex, age and autonomous community, to enable the effectiveness to be assessed of the State Public Employment Service and the employment services provided by the autonomous communities and, in particular, the manner in which the public employment services have contributed to labour market reintegration, especially of young persons, the long-term unemployed, persons with disabilities and persons in regions with higher levels of unemployment.***

*Articles 4 and 5. Collaboration with the social partners.* In its reply to the Committee's previous comments, the Government reiterates in its report that there was constant social dialogue during an intense period of reform in which it has always tried to seek agreement with the social partners. The Government indicates that the social actors were consulted in the ad hoc working groups and in the tripartite participative bodies set up for that purpose at state, autonomous community and local levels. The UGT emphasizes the importance of the institutional participation of the social partners in the consultative bodies of the State Public Employment Service and the National Employment System for the evaluation of employment policies and the formulation of proposals for the social dialogue agenda. However, the UGT maintains that these bodies, the General Council of the National Employment System and the General Council of the Public Employment Service, did not hold regular meetings between 2016 and 2017, despite the fact that their rules of internal procedure stipulate that at least two meetings a year should be held. The CEOE also considers that these bodies should meet more regularly and send sufficient advance notice of their meeting and the necessary documentation with a view to ensuring the effective participation of the social partners at those meetings. In its reply, the Government indicates that the participation of the social partners in the State Public Employment Service and in the employment services of the autonomous communities was strengthened following the enactment of the consolidated text of the Employment Act, under Royal Legislative Decree No. 3/2015, of 23 October 2015. ***The Committee requests the Government to take measures to ensure that the general policy on employment services has been finalized following consultations with the representatives of the social partners, and to provide detailed information on the measures taken and their impact on the participation of the representatives of the social partners, especially in the consultative bodies of the State Public Employment Service and the National Employment System.***

*Article 6. Functions of the public employment service.* ***The Committee requests the Government to provide updated information, including statistics and copies of reports or studies on the manner in which this Article of the Convention has been given effect. In particular, the Committee requests the Government to provide information on the compilation and analysis, in cooperation with the social partners and other authorities, of extensive information on the labour market situation and its predicted development, in the interests of aligning employment services with the needs of employers. In this respect, the Committee refers the Government to Paragraph 5 of the Employment Service Recommendation, 1948 (No. 83), which provides guidance on this matter.***

*Articles 7 and 8. Special categories of workers. Youth employment.* The Committee notes that the objectives of the employment policy set out in section 2(d) of Royal Legislative Decree No. 3/2015 include establishing appropriate policies for groups who have more difficulty reintegrating into the labour market, especially young persons, women, persons with disabilities, the long-term unemployed and persons over 45 years of age. In addition, the Committee notes that the objectives of the third target area of the PAPE 2016 on employment opportunities include promoting and sustaining the procurement of groups and sectors with difficulties, to provide work, experience and to sustain economic

activity. In this connection, the Government's report refers to the increase, compared with 2015, in the allocation intended to finance the programme and services included in the third target area of the PAPE 2016 in order to increase work experience for unemployed persons, particularly persons with disabilities. Under the fourth target area, all services and programmes for active employment policies and job placement services shall also promote equal opportunity in access to employment. The Committee also notes the information provided by the Government on the measures carried out by the employment services to boost employment for young persons and the unemployed, and the impact of these. Nevertheless, the Committee notes that the UGT indicates in its observations that the unemployment rate among persons under 25 years is 41.66 per cent. ***The Committee requests the Government to provide detailed information on the measures taken to find full and productive employment for persons vulnerable to decent work deficits and exclusion, especially young persons, women, persons with disabilities, the long-term unemployed and persons over 45 years. The Committee also requests the Government to provide statistical information disaggregated by sex, age and autonomous community on the results of measures adopted.***

*Article 11. Cooperation between private and public employment agencies.* The Committee notes that, based on the terms of the consolidated text of the Employment Act, the public employment services shall establish with employment agencies and entities (public or private, profit or non-profit making) contracts, agreements or other coordination instruments which help jobseekers find employment placements. The consolidated text of the Employment Act also sets out that, irrespective of the agent that undertakes placement in employment, account shall be taken of the public nature of the service, which shall be provided without charge for workers and employers. In addition, the agencies shall provide information on the workers attended to and the activities carried out, as well as the job offers and the skills required; guarantee the observance of the principle of equality in access to employment; and comply with the regulations in force regarding labour and social security. The Government also reiterates that through the framework agreement with employment placement agencies for collaboration with the public employment services, projects are coordinated for public-private collaboration in employment placement by public employment services. The CEOE considers that the implementation of the public-private collaboration model in employment placement is being hampered by administrative obstacles, which has decreased the quality of the service provision. In its reply, the Government indicates that the employment placement agencies simply have to present an affidavit, before starting their activities, to the State Public Employment Service, and that the competent departments may still carry out a subsequent check, control and inspection. The CCOO states that the private employment agencies are promoted to the detriment of the public employment services. ***The Committee requests the Government to indicate the specific measures that have been adopted to guarantee the effective cooperation between the public employment agency and private employment placement agencies, and to provide statistical information in this respect.***

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 August 2017 and 17 August 2017, respectively. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), supported by the International Organisation of Employers (IOE), included in the Government's report. It also notes the Government's replies to the previous observations, included in its report.

*Articles 1 and 2 of the Convention. Labour market trends and implementation of an active employment policy.* The Committee notes the adoption of the National Reform Programme (PNR) of 2017, in the framework of the coordination of the economic and budgetary policy, the "European Semester". The Government indicates in the PNR that the positive impact of the labour reform and other structural reforms have resulted, in recent years in Spain, in a steady pace of job creation and unemployment reduction. The aim of the PNR is to consolidate this trend and advance towards more inclusive and better quality employment through three concrete objectives: (1) increase the effectiveness of the National Employment System (SNE); (2) increase the effectiveness of training; and (3) improve the efficiency of the plans on activation and integration into employment. With regard to the labour market trends, the Government indicates in its report that in 2016, in annual terms, the trend towards job creation and unemployment reduction that started in the second half of 2014 was established. The Government adds that this trend has continued throughout 2017. In particular, according to data from the Economically Active Population Survey of the National Statistics Institute (INE), in the second quarter of 2017 the rate of job creation accelerated by 2.8 per cent owing to the growth in temporary employment. The growth rate of permanent employment remained steady at 1.8 per cent year on year, while the growth rate of temporary employment sped up, reaching 7.7 per cent per year. The employment rate among the 16-64 age group is 62.04 per cent and the activity rate is 75.06 per cent. The Government also indicates that the unemployment rate fell to 17.22 per cent in 2016, 2.78 percentage points less than the previous year, which is the highest fall in unemployment in the past decade. However, in its observations, the UGT maintains that the jobs created are of a precarious and very short-term nature, affecting 25.8 per cent of employees. In this regard, the Committee notes that, according to the Recommendation of the Council of the European Union on Spain's 2017 PNR, the country has one of the highest percentages of temporary employment in the European Union (EU) and many temporary contracts are very short. In addition, according to the Recommendation, the transition rates from temporary to permanent contracts are very low compared with the average in the EU. In its observations, the UGT also refers to the problem of involuntary bias, indicating that about 1.7 million persons work part time because they have not found full-time employment. For its part, the CCOO notes that in order to develop a good

active employment policy it is necessary to have an adequate budget, and expresses its concern that the budget allocation for the active employment policies fell between 2013 and 2017. ***The Committee requests the Government to continue providing up-to-date information on the measures adopted or envisaged to achieve the objectives of the Convention and, in particular, on how these have helped the beneficiaries obtain full, productive and sustainable employment. The Committee also requests the Government to provide updated statistical information on the development of the labour market, particularly on the rates of the economically active population, employment and unemployment, disaggregated by sex and age.***

***Youth employment.*** In response to the Committee's previous comments, the Government indicates that, according to data from the Economically Active Population Survey, the unemployment rate for the 16–24 age group decreased from 48.3 per cent in 2015 to 44.4 per cent in 2016. In 2016, the rate of young persons under 25 years without employment and not studying dropped 1.2 percentage points compared with 2015. The Committee notes the information provided by the Government in its report in relation to the measures taken within the framework of the Strategy for Entrepreneurship and Youth Employment 2013–16 and the national Youth Guarantee system with a view to promoting and supporting the integration of young persons into the labour market. In this regard, the Government refers to the adoption of Royal Decree Law No. 6/2016, of 23 December 2016, on urgent measures to boost the national Youth Guarantee system, which introduced significant changes to increase young persons' registration and access to the system. For example, jobseekers are automatically registered in the system by simply registering or renewing their status in a public employment service if the requirements are met, with retroactive effect on the date of such registration or renewal. In addition, in 2015 the maximum age of beneficiaries was extended, on an exceptional basis, up to 29 years, while the youth unemployment rate among 25–29 year-olds continues at above 20 per cent. The Government adds that, as a result of such measures, the number of users registered in the system rose from 36,678 young persons in March 2015 to 815,077 in August 2017. However, the UGT states in its observations that the number of young persons active in the labour market has fallen due to discouragement, and emigration among young persons has increased owing to the lack of opportunities for quality employment. In its reply, the Government states that the youth unemployment rate has fallen by 15 points in the past three years and that permanent recruitment of young persons has increased by 30 per cent compared with 2011. The UGT, however, states that it was neither consulted nor informed about the measures adopted within the framework of the Youth Guarantee plan. In response, the Government indicates that, following the adoption of Royal Decree Law No. 6/2016, the workers' organizations formed part of the executive committee for the follow-up and evaluation of the national Youth Guarantee system, in which they participated, on 13 December 2016 and 22 June 2017, in the analysis and assessment of activities carried out. The Government adds that the information on the actions performed within the framework of the Youth Guarantee plan is also reproduced in the annual reports presented to the Employment Committee of the European Commission. ***The Committee requests the Government, in its next report, to provide an evaluation, carried out in consultation with the social partners, of the employment measures to ascertain the specific results achieved through the Strategy for Entrepreneurship and Youth Employment and the Youth Guarantee system, in particular for young persons with few qualifications.***

***Long-term unemployed.*** In response to the Committee's previous comments, the Government refers in its report to the implementation of various measures aimed at increasing the employment rate of the long-term unemployed, such as extending the implementation period of the extraordinary Programme for Employment Activation until 28 April 2018 and of the Employment Retraining Programme (PREPARA) until the unemployment rate is under 18 per cent. The Government reports that the Joint Action Programme for the Long-term Unemployed was adopted on 18 April 2016 at the Sectoral Conference for Employment and Labour Affairs, which provides for individual attention and close monitoring of the actions carried out with the long-term unemployed to help them to find work. The programme's first objective is to assist around 1 million long-term unemployed in the first three years, giving priority to those between 30 and 54 years of age. The Committee notes that the UGT states that contributions from the workers' organizations were not taken into consideration in the development of the new programme and that they are not aware of its impact. The Government points to the extension of the extraordinary Programme for Employment Activation and the PREPARA, as well as the adoption of the Joint Action Programme for the Long-term Unemployed, indicating that both have been subject to dialogue and consensus with the social partners. Lastly, the UGT emphasizes that the rate of long-term and very long-term unemployment remains steady and that in the first half of 2017, 54.4 per cent of unemployed persons had been looking for work for over a year and 40 per cent for over two years. ***The Committee requests the Government, with the participation of the social partners, to provide an evaluation of the measures taken to facilitate the return to the labour market of the long-term and very long-term unemployed.***

***Education and vocational training programmes.*** In response to the Committee's previous comments, the Government has provided information in its report on the measures adopted to improve the level of qualifications and coordinate training and education policies with potential employment opportunities, and the outcome of those. To that end, the Government refers to the adoption of Act No. 30/2015, of 9 September 2015, which regulates the vocational training system for employment in the world of work. The strategic objectives of this Act include: ensuring the exercise of the right to training of the most vulnerable workers, whether employed or unemployed; effective contribution of training to the competitiveness of enterprises; efficiency and transparency in the management of public resources; and strengthening of collective bargaining concerning the alignment of training options with the demands of the production system. The Government indicates that in 2015 the National Qualification Strategy was developed in cooperation with the

Organization for Economic Cooperation and Development (OECD), which highlights the main challenges for Spain with regard to training, such as early school drop-out, the high number of jobseekers without basic qualifications, and the mismatch between skill demand and supply. The Government also refers to the phased application of the Organic Act on the Improvement of the Quality of Education (LOMCE), aimed at dealing with those challenges. The Government adds that the rate of early school drop-out has decreased, falling in the first quarter of 2017 to 18.99 per cent and that the percentage of young persons between 20 and 29 years of age with a low level of education stands at 31.7 per cent, the lowest in the past decade. However, the employment rate of recent university graduates continues to be one of the lowest in Europe owing, inter alia, to the poor relationship between businesses and universities, which does not allow for university degrees to be matched with business demands. The Committee notes that the UGT emphasizes the absence of dialogue and bargaining in the education field, particularly, in relation with the LOMCE, the implementation of which is frozen. The UGT also states that the mismatch between skill supply and demand persists. The CEOE maintains that the reform of the vocational training system for employment in the labour sphere was rolled out with objections from the social partners and their role is limited in the new model. **The Committee requests the Government to continue sending information on the measures adopted or envisaged, in cooperation with the social partners, to improve the level of qualifications and coordinate education and training policies with potential employment opportunities.**

*Article 3. Consultation with the social partners.* In its previous comments, the Committee requested the Government to indicate the manner in which the social partners participated in the formulation, implementation and evaluation of employment policies to continue to overcome the negative impact of the crisis in the labour market. The Government indicates that the observations of the employers' organizations, the CEOE and the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME), and the workers' organizations (the CCOO and UGT), were taken into account in the development of the 2017 PNR. Furthermore, the Government indicates that a new framework for active labour market policies, the Spanish Strategy for Employment Activation 2017–20 is currently being designed, which will be based on a broad dialogue with the regions, social partners and all interested parties. The Government adds that the social partners are regularly informed and share their views on matters related to employment within the tripartite consultative bodies established for that purpose at the level of the State, autonomous entities and local authorities. The UGT and CCOO maintain that the social partners are not consulted prior to the adoption, implementation and evaluation of the employment policies. The CCOO adds that, while social dialogue forums on employment have been set up and it participates in various bodies involved in policy decision-making, the social partners have a narrow margin of influence over those policies as their proposals are not taken into consideration. In response, the Government reiterates that social dialogue was permanently in place during an intense period of reform in which it has always tried to seek agreement with the social partners. The UGT, on the other hand, emphasizes the non-compliance with the regulations concerning the holding and periodicity of the meetings of the General Council of the National Employment System and the General Council of the State Employment Public Service. The CEOE indicates that the social partners cannot make observations before the PNR has been developed and request that they more actively participate in its design, application and evaluation. **The Committee requests the Government to continue sending detailed information on the manner in which the social partners participate in the design, implementation and evaluation of the employment policies.**

## Uganda

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* In its previous comments, the Committee requested the Government to provide information on the results achieved and the difficulties encountered in attaining the employment policy objectives set out in its National Employment Policy (NEP). The Committee notes the detailed information contained in the evaluation of the implementation of the NEP conducted by the Ministry of Finance, Planning and Economic Development. According to the evaluation findings, the overarching development agenda addressed the most pressing employment challenges, but did not effectively translate into a coherent implementation strategy due to inadequate coordination across the government, inadequate labour market information, conflicting policy objectives and a bias towards short-term priorities over longer-term sustainable progress. In addition, the National Employment Council, the governmental body responsible for coordinating, guiding, streamlining and monitoring efforts towards implementation of the NEP, has not yet been established. The Committee notes that the country has registered a modest increase in total employment in recent years and that lower-productivity activities, such as subsistence agriculture and petty trade have expanded. In this regard, the Committee observes that the percentage of the formal and informal labour engaged in low productivity agricultural activities increased from 69 per cent in 2009 to 72 per cent in 2012–13. Moreover, according to the Uganda Bureau of Statistics (UBOS), the rate of unemployment under the newly revised definition (which counts subsistence farmers as employed persons) was 9.4 per cent in 2012–13, while the underemployment rate during the same period was 8.9 per cent, being especially common in the agricultural sector. Furthermore, while the percentage of people living below the poverty line decreased from 24.3 per cent in 2009–10 to 19.7 per cent in 2012–13, significant disparities in poverty levels persist across regions and between rural and urban areas, with the highest levels of poverty reported in Northern Uganda (44 per cent). The Committee notes the adoption of the second National Development Plan 2015/16-2019/20 (NDPII) in June 2015, whose principal objective is “strengthening the country’s competitiveness for sustainable wealth creation, employment and inclusive growth”. **The Committee**

*requests the Government to provide information on the results achieved and the challenges encountered in attaining the employment policy objectives set out in the second National Development Plan (NDPII), including results of the programmes established to stimulate growth and economic development, raise living standards, respond to labour force needs and address unemployment and underemployment. The Committee further requests the Government to continue providing up-to-date information, including statistical data disaggregated by economic sector, sex and age, on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country and in the different regions.*

*Promotion of youth employment.* The Committee previously requested the Government to provide information on the results of the programmes adopted concerning education and vocational training for young persons as well as on efforts made to improve the employment situation for young persons. The Committee notes that, according to the NDPII, young persons make up 21.3 per cent of the total population and 57 per cent of the labour force. According to the UBOS, the number of young persons in employment increased from 63.1 per cent in 2013 to 64.5 per cent in 2015; however, the unemployment rate for young persons also increased from 9.7 per cent in 2013 to 14.7 per cent in 2015. Moreover, the vast majority of all young workers (92 per cent) were engaged in informal employment in 2015. The Committee notes that, in response to high rates of unemployment and poverty among young persons, in December 2016 the Government launched the Youth Livelihood Programme (YLP) under the Ministry of Labour, Gender and Social Development (MLGSD) and with the participation of key stakeholders. The YLP provides young persons with vocational skills and interest-free loans to assist them in becoming self-employed. In relation to the education of the labour force, the Committee notes that the school-to-work transition survey (SWTS–2015) developed by the ILO shows that 68 per cent of young Ugandans not in school had only completed a primary education, while only 3.4 per cent had completed a tertiary education. In this regard, the Committee notes the adoption of the National Adult Literacy Policy 2014 and Action Plan (2011/12–2015/16) intended to guide the provision and coordination of adult literacy services. In addition, during 2009–13, enrolment in formal business, technical, vocational education and training (BTJET) increased by 73 per cent (with 66 per cent men and 34 per cent women). Enrolment in higher education increased by 18 per cent, with a significant increase in female enrolment. Nevertheless, according to the SWTS-2015 findings, young persons with a tertiary level of education had higher levels of unemployment (12 per cent) than the national average. Despite the adoption of the BTJET Strategic Plan 2011–20 in 2011, persistent challenges highlighted by the NDPII in the area of vocational education and training include: inadequate skills to support increased production and expansion; poor work readiness of many young people leaving formal education and entering the labour market; inadequate linkages between employers and workplace learning; and lack of literacy. *The Committee requests the Government to provide detailed information on the manner in which the implementation of the Youth Livelihood Programme (YLP) and other programmes providing education and vocational training for young persons has promoted access for young people to full, productive and freely chosen employment. The Committee also requests the Government to provide information on the measures envisaged or adopted to reduce the unemployment rate of young people, particularly those with higher levels of education, and to reduce the percentage of young people in informal employment.*

*Promotion of women's employment.* In its previous comments, the Committee requested the Government to provide information on the measures adopted to improve job creation and increase the labour market participation of women. The Government reports that, according to data derived from the Uganda National Household Survey (UNHS) data 2012–13, 45 per cent of the total employed population were women, but only 39.1 per cent were in wage employment. The NDPII indicates that there has been improvement in the number of women in political leadership and in terms of gender parity in enrolment of boys and girls at the primary school level, in addition to increased ownership of land by women. The Committee also notes the prioritization of gender equality in Uganda's Vision Statement 2020 as a cross-cutting enabler for socio-economic transformation, and the implementation of the Uganda Women Entrepreneurship Programme (UWEP) under the MLGSD, with the aim of contributing to the creation of self-employment and household wealth through activities such as the mobilization and sensitization of communities, training and capacity development, and provision of access to credit, appropriate technology and markets. The Committee notes, however, that despite the progress made, the conditions sustaining gender inequality persist: gender disparities in access and control over productive resources such as land (only 27 per cent of registered land is owned by women); the limited share of women in wage employment in the non-agricultural sector; higher rates of illiteracy among the female labour force than the male labour force (27.6 per cent of women and 12.3 per cent of men have no formal schooling). *Recalling the Committee's 2014 comments under the Equal Remuneration Convention, 1951 (No. 100), concerning the occupational segregation of women and its contribution to the gender pay gap, the Committee requests the Government to provide information on the measures taken or envisaged to combat the persistence of occupational segregation on the basis of sex (both vertical and horizontal) and to increase the labour force participation rate of women in the formal labour market.*

*Informal economy.* In its previous comments, the Committee requested the Government to provide information on the measures adopted or envisaged to extend access to justice, property rights, labour rights and business rights to the informal economy workers and business, and to indicate the manner in which Government initiatives relating to micro-enterprises had contributed to improving working conditions in the informal economy. The Committee notes the growing importance of the informal economy, which has absorbed four out of five new entrants into the labour market. According to the SWTS–2015, 92 per cent of young workers were involved in informal employment (93 per cent women and 91 per cent men). The rate of informal employment in rural areas was higher (94 per cent) than that in urban areas (87 per cent).

The Government indicates, moreover, that the informal economy is characterized by widespread labour right violations and decent work deficits. In particular, workers in the informal sector are excluded from social security protection and there are important gaps in terms of social dialogue. The Committee notes that the majority of micro-, small and medium-sized enterprises (MSMEs), operate informally. In this respect, the Committee notes the adoption, in consultation with stakeholders, of the Micro-, Small and Medium Enterprise (MSME) Policy in June 2015, which provides opportunities for informal MSMEs to increase their expertise through skills upgrading and certification, and encourages them to formalize their operations in order to enjoy greater legitimacy through government protection. ***Noting that a growing proportion of the labour force is employed in the informal economy, the Committee requests the Government to provide information on the efforts made to extend access to justice, property rights, labour rights and business rights to informal economy workers and business (see General Survey of 2010 on employment instruments, paragraph 697). It also requests the Government to indicate the manner in which the Micro-, Small and Medium Enterprise (MSME) Policy has contributed to improving working conditions in the informal economy, particularly for young persons.***

*Article 3. Participation of the social partners.* The Committee notes that the NDPII was formulated in collaboration with stakeholders, including ministries, local governments, the private sector, civil society organizations and international agencies. In addition, the NDPII emphasizes that the Government should take overall responsibility for its implementation with the participation of the private sector, development partners, the civil society and other non-state actors. ***The Committee requests the Government to provide detailed information on the involvement of the social partners in the implementation of the second National Development Plan (NDPII).***

## Bolivarian Republic of Venezuela

### ***Employment Service Convention, 1948 (No. 88) (ratification: 1964)***

The Committee notes the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 31 August 2016 and 31 August 2017. The Committee also notes the observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 12 October 2016 and 18 September 2017. It also notes the Government's replies to the social partners' observations of 2016, received on 11 November 2016.

*Article 1 of the Convention. Contribution of the employment service to the promotion of employment. Application of the Convention in practice.* The Committee notes that the Government refers in its report to the creation of the Social Welfare Divisions (DPS), which coordinate with the Meeting Centres for Education and Work (CEET) to provide services in the fields of labour, education and social security. The DPS are entities attached to the People's Ministry of Labour which provide comprehensive labour information and guidance services for persons with disabilities, migrant workers, non-dependent workers and applicants for the "involuntary loss of employment" benefit. The Government also supplies information on the activities carried out by the CEET between 2014 and 2016 in cooperation with various state bodies. In this respect, the Government indicates that between January and November 2014 the CEET provided assistance for 72,269 workers, of which 35,938 were registered; 30,811 were included in the training sphere and 1,874 were included in the spheres of labour and social production; and 3,646 applied for jobs. In 2015, the competencies and functions of the CEET were modified with the aim of developing "ongoing and comprehensive group self-training" for workers, and assistance was provided for 108,079 workers. In 2016, a total of 92,326 workers were registered who received guidance and training from the CEET, and 3,120 workers were organized into 266 teams of "promoters of ongoing and comprehensive group self-training". In addition, a "pilot comprehensive support plan" for young persons and students was drawn up with the aim of promoting the active participation of young persons in the social process of labour. The Government adds that in 2015 and 2016, a total of 205,079 workers facing termination of employment were registered and given guidance for their integration into the social process of labour. The Committee notes that the IOE and FEDECAMARAS maintain in their observations that the CEET continue to be non-operational. The workers' confederations (UNETE, CTV, CGT and CODESA) indicate that the Government has not implemented the system for the registration of employment requirements and vacancies established under the Act concerning the Major Knowledge and Labour Mission, so that in practice no register exists to enable forecasting and identification of the numbers and characteristics of unemployed workers. ***The Committee requests the Government to send detailed information, including statistics disaggregated by sex and age, on the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by the CEET and the DPS. The Committee also requests the Government to provide up-to-date information on the impact of measures adopted to meet the needs of young persons regarding employment and vocational guidance, including those adopted as part of the pilot comprehensive support plan.***

*Articles 4 and 5. Cooperation of the social partners.* The Government refers in its report to the system of organization of labour entities in the production chain. However, the Committee observes that the information supplied by the Government does not contain a reply to its previous comments. The Committee recalls that *Article 5* of the Convention provides that the general policy of the employment service must be developed after consultation of representatives of employers and workers. The Committee notes that FEDECAMARAS and the IOE indicate that the Government is still

failing to comply with the abovementioned Article of the Convention and maintain that FEDECAMARAS has not been consulted with regard to the formulation and implementation of the general employment service policy. *The Committee requests the Government to send its comments in this regard. The Committee also requests the Government once again to provide specific examples of previous consultations held with the employers' and workers' organizations with a view to securing their cooperation in the organization and functioning of the public employment service.*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1982)**

The Committee notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), and the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 31 August 2017. The Committee also notes the observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 18 September 2017. *The Committee requests the Government to provide its comments in this respect.*

### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)**

The Committee notes the discussion on the application of the Convention that took place in the Conference Committee on the Application of Standards in June 2017. The Committee also notes that, in its conclusions, the Conference Committee noted with deep concern that the Government had not yet addressed its 2016 conclusions. The Conference Committee also noted the lack of social dialogue in relation to an active employment policy designed to promote full, productive and freely chosen employment. Taking into account the discussion, the Conference Committee urged the Government, with ILO technical assistance, and without delay to: develop, in consultation with the most representative workers' and employers' organizations, an employment policy designed to promote full, productive and freely chosen employment, in a climate of dialogue free from any form of intimidation; implement concrete measures to put in practice an employment policy to stimulate economic growth and development, raise standards of living, and overcome unemployment and underemployment; and institutionalize a tripartite round table, with the presence of the ILO, to build a climate of trust based on respect for employers' and workers' organizations, with a view to fostering social dialogue and promoting solid and stable industrial relations. The Conference Committee also urged the Government to report in detail to the Committee of Experts on the application of the Convention in practice and to respond to the conclusions of the Conference Committee. The Committee notes that the Government has confirmed its acceptance of the recommendation of the Conference Committee in 2016 that it receive a high-level ILO tripartite mission. *The Committee hopes that the high-level ILO tripartite mission will be able to assess the progress achieved towards compliance with the conclusions of the Conference Committee.*

*Articles 1 and 2 of the Convention. Implementation of the employment policy within the framework of a coordinated economic and social policy. Measures to respond to the economic crisis.* The Committee notes that, in the context of the discussions on the case of the Bolivarian Republic of Venezuela by the Conference Committee on the Application of Standards in June 2017, a Government representative referred to the report provided in 2016, indicating that it had provided indicators demonstrating the existence of a sustained employment policy. In this regard, the Government referred to the implementation of the Second Socialist Plan for the economic and social development of the nation and the Bolivarian Economic Agenda. The Committee also notes the emphasis placed by the Government in its report on the reinforcement in October 2016 of the Missions and Major Missions in the context of the adoption of the Socialist Territorial Plan 2016–19. In particular, the Government refers to the Major Mission on Knowledge and Labour, created to assist unemployed persons without any type of income, and the Bases Mission, which seeks to eradicate extreme poverty. Decrees have continued to be issued on employment security and the annual increase in the minimum wage was adopted taking as a reference the cost of the basic basket. The Government indicates that, within the framework of the Bolivarian Economic Agenda, social agents participated in round table meetings with a view to developing measures to generate stability and employment. The Committee notes the indication by the CTASI in its observations that the Government has still not adopted an employment policy. The IOE and FEDECAMARAS once again emphasize that there is no coordinated policy in national macroeconomic planning for the joint implementation of employment plans. The employers' organizations also refer to the statistics of the International Monetary Fund (IMF), which forecast a 10 per cent contraction of GDP and a cumulated inflation rate of 1,660 per cent in 2017, which would mean the longest period of recession in the country for the past 20 years, and the highest inflation rate in the world for the third consecutive year. They add that, according to the Living Conditions Survey (ENCOVI), 93 per cent of households in 2016 did not have sufficient income to cover the basic basket and 82 per cent of the population was living in poverty. They add that they are unaware of the specific strategic measures of the Bolivarian Economic Agenda adopted by the Government with a view to reinforcing employment protection. The workers' confederations UNETE, CTV, CGT and CODESA indicate that they are also unaware of the measures adopted within the framework of the Economic and Social Development Plan 2007–13, and the social missions for the generation of productive employment. *The Committee requests the Government to continue providing detailed information on the specific measures adopted for the formulation and adoption of an active employment policy to promote full, productive and freely chosen employment, in full compliance with the Convention, and on the consultations held with the social partners for this purpose.*

*Labour market trends.* The Committee notes that, according to the Household Sample Survey of the National Institute of Statistics (INE), the activity rate fell from 64.8 per cent in April 2015 to 62.7 per cent in April 2016. The activity rate of men increased by 0.4 percentage points, while that of women fell by 3.7 percentage points. Over the same period, the inactivity rate increased from 35.2 per cent to 37.3 per cent, with a significant increase in the inactivity rate of women (3.7 percentage points), compared with that of men (0.4 percentage points). The employed population fell from 93 per cent to 92.7 per cent, and the number of unemployed rose from 7 per cent to 7.3 per cent (8.3 per cent for women and 6.7 per cent for men). In its observations, the CTASI reiterates that the employment statistics used in the Bolivarian Republic of Venezuela do not address underemployment or precarious employment, and emphasizes that the total of open unemployment and employed persons with 15 hours of work a week or less shows a deficit in the national labour market of 11 per cent. The workers' confederations UNETE, CTV, CGT and CODESA indicate that the Government does not provide detailed and disaggregated data on the situation, level and trends of employment which would provide a basis for assessing the impact of the measures adopted within the framework of the employment policy. ***The Committee requests the Government to provide detailed information, including updated statistics, disaggregated by gender and age, on the situation and trends of the labour market in the country. The Committee also requests the Government to provide information on the impact of the measures adopted to give effect to the Convention.***

*Transitional labour regime.* In its previous comments, the Committee noted the adoption of Resolution No. 9855 of 22 July 2016 establishing a transitional labour regime that is compulsory and strategic for the revival of the agro-food sector, which provides for workers in public and private enterprises to be placed in other enterprises (requesting enterprises) in that sector, which are different from the enterprises in which the employment relationship originated. The Committee also noted the observations of the IOE and FEDECAMARAS indicating that "requesting enterprises" (owned by the State) were the ones, and not the worker, who seek the transfer of the worker to another enterprise, which is contrary to the principles of the Convention. The Committee notes that in June 2017 a Government representative in the Conference Committee stated that Resolution No. 9855 had been repealed. The Government also indicates in its report that the transitional labour regime is no longer in force, as the Resolution provided for a period of application of 180 days. However, the Committee notes that the employers' organizations IOE and FEDECAMARAS indicate that they are unaware of the official repeal of Resolution No. 9855, and that the Government has merely ceased applying it on a temporary basis. They therefore submit that the Government continues to be in violation of the principle of the Convention that requires member States to develop, in coordination with the social partners, an active policy to promote full, productive and freely chosen employment. ***In light of the divergence of views, the Committee requests the Government to indicate the current situation with regard to the application of Resolution No. 9855.***

*Youth employment.* The Government refers in its report to the adoption of various measures to reduce youth unemployment and to promote the integration of young persons into the labour market. In this respect, the Government indicates that, in accordance with the Employment Act for productive youth, support and resources are provided to young persons to implement projects as a basis for the construction of the new model of economic development in the country. In 2017 the Youth Chamba Plan was adopted for young persons between 19 and 35 years of age with the objective of their labour market integration in the sectors prioritized in the Bolivarian Economic Agenda. The Plan is intended principally for young persons in a situation of vulnerability; unemployed young university students, young persons not attending school, single mothers, young persons with family responsibilities and young persons in the streets. The first phase of the Plan aims at the integration of 200,000 young persons into the labour market and will be implemented by 172 training centres. The Government adds that the Major Mission on Knowledge and Labour includes among its principal objectives the implementation of a special productive employment plan for young persons. The Government adds that in 2016 a total of 24,085 women and 17,737 men were active apprentices in the National Training Programme (PNA). The employment rate of participants in the PNA rose from 1.88 per cent in 2015 to 2.10 per cent in 2016. The Government adds that, through cooperation between various State bodies and private labour entities, over 40,000 young apprentices a year are provided with training and integrated into the labour market. In their observations, the IOE and FEDECAMARAS maintain that the youth employment figures of the official survey of April 2016 do not reflect the gravity of the situation. They indicate that there has been a significant decrease in the economically active population and an increase in unemployment among young persons between the ages of 15 and 24 years. The workers' confederations UNETE, CTV, CGT and CODESA regret that the Government is concealing information on youth employment trends. They also consider that measures have not been adopted to minimize the impact of unemployment on young persons and to promote their sustainable labour market integration, particularly for the most underprivileged categories of youth. ***The Committee once again requests the Government, with the participation of the social partners, to provide an evaluation of the active employment policy measures implemented to reduce youth unemployment and promote their sustainable integration into the labour market, particularly for the most underprivileged categories of young persons. The Committee also requests the Government to continue providing detailed statistical data, disaggregated by age and gender, on youth employment trends.***

*Development of small and medium-sized enterprises (SMEs).* In reply to its previous comments, the Government indicates that an assessment has been made of the needs of small and medium-sized enterprises with a view to improving their productive efficiency. They have been provided with technical assistance and financial support, and new incentives and mechanisms have been established to promote the development of the small and medium-sized industry sector. The Government also refers in its report to the adoption of measures to promote entrepreneurship by women through the Soy

*Mujer* programme, which provides technical, logistical and financial support for its projects. However, the Committee notes the indication by the IOE and FEDECAMARAS in their observations that private enterprises are closing down ever more rapidly, and particularly small and medium-sized enterprises, which represent 80 per cent of the total. **The Committee requests the Government to provide information on the impact of the measures adopted to promote the creation and productivity of small and medium-sized enterprises, and to develop a conducive climate for the generation of employment in such enterprises.**

*Article 3. Participation of the social partners.* The Committee notes that in June 2017, within the framework of the International Labour Conference, a tripartite meeting was held between the Government and the social partners. However, the Employer members of the Conference Committee refused to participate in the meeting due to the lack of balanced representation, as not all of the workers' organizations of the Bolivarian Republic of Venezuela present in the Conference had been invited to participate. The Committee also notes the Government's indication in its report that meetings have been held with FEDECAMARAS and workers' organizations in 2017. The IOE and FEDECAMARAS indicate that the Government is continuing to fail to comply with its obligation to consult the representatives of employers and workers for the development of the employment policy, emphasizing that FEDECAMARAS, despite its representativity, has not been consulted by the Government for 17 years on the establishment and coordination of the employment policy. FEDECAMARAS adds that it has not been invited to attend the National Council for the Productive Economy (CNEP), in which consultations are held on strategic national economic issues. FEDECAMARAS requests the Government to provide the records of the meetings of the CNEP, in which agreement was reached on the employment policy, wage rises and any other structural measures relating to employment. The workers' confederations UNETE, CTV, CGT and CODESA affirm that workers' organizations are still not consulted on policy formulation and that the Government is still failing to take into consideration the views of employers' and workers' organizations for the development and implementation of employment policies and programmes. **The Committee once again requests the Government to provide information, including specific examples of the manner in which employers' and workers' organizations have been consulted and their views taken into account in the development and implementation of employment policies and programmes. The Committee also once again requests the Government to provide detailed information on the activities of the National Council for the Productive Economy in relation to the subjects covered by the Convention.**

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 2** (Guyana, Malta); **Convention No. 88** (Australia, Belize, Central African Republic, Democratic Republic of the Congo, Djibouti, Dominican Republic, Guinea-Bissau, Lebanon, Madagascar); **Convention No. 96** (Côte d'Ivoire, Libya, Luxembourg, Malta); **Convention No. 122** (Albania, Algeria, Australia, Barbados, Belarus, Belgium, Cambodia, Cameroon, Croatia, Cuba, Denmark, Denmark: Greenland, Estonia, Fiji, France: New Caledonia, Gabon, Georgia, Guinea, Honduras, Hungary, Iceland, Islamic Republic of Iran, Iraq, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mongolia, Montenegro, Morocco, Netherlands: Aruba, Netherlands: Caribbean Part of the Netherlands, Netherlands: Curaçao, Netherlands: Sint Maarten, Norway, Papua New Guinea, Rwanda, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United Kingdom: Guernsey, Uzbekistan, Yemen); **Convention No. 159** (Afghanistan, Côte d'Ivoire, Croatia, Dominican Republic, Kyrgyzstan, Lebanon, Madagascar, Malawi, Malta, Mongolia, Netherlands, San Marino, Spain, Uganda); **Convention No. 181** (Albania, Japan, Suriname).

## Vocational guidance and training

### Portugal

#### **Human Resources Development Convention, 1975 (No. 142) (ratification: 1981)**

The Committee notes the observations of the General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN) and the General Workers' Union (UGT), transmitted with the Government's report. ***The Committee requests the Government to provide its comments in this respect.***

*Articles 1–4 of the Convention. Formulation and implementation of policies and programmes of vocational guidance and vocational training.* The Committee notes with ***interest*** the set of measures undertaken by the Government with a view to developing the workforce and adapting it to the requirements of the labour market. The Government refers, among other measures, to the adoption in October 2013 of the Cross-cutting Training Programme for job activation and jobseeking techniques, which sets out the activities to be implemented by the Employment and Vocational Training Institute (IEFP) to improve the employability of unemployed people and to provide them with support in relation to entrepreneurship. It also refers to the implementation of the Youth Guarantee Programme since January 2014, which includes coordinated strategies and guidelines concerning vocational guidance, vocational training and employment for young people under the age of 30 who are not in education, employment or training (NEET). The Programme includes, among its objectives, the development of vocational guidance structures and systems, as well as the promotion of education and training at different qualification levels to improve the skills profiles of young people. In March 2014, 241 Centres for Qualification and Vocational Education (CQEP) were established in different educational institutions to bridge gaps between education, training and employment. The CQEP provides information and personalized guidance to youth and adults, including vocational training, certificates which have double validity (educational and vocational) and related educational opportunities. In 2015, the Qualification Needs Anticipation System (SANQ) was created to provide a comprehensive analysis of skills supply and demand with the aim of defining training options and updating the National Catalogue of Qualifications. Based on the cited analyses, the SANQ developed the Portal of Qualifications, which provides information to various interested parties with regard to vocational training and other educational opportunities, as well as in relation to their employment prospects. The Government adds that measures were carried out to reduce school drop-out rates, including dissemination activities on the education and vocational training system to encourage youth participation. In this regard, the Committee notes that, according to the 2015 Education and Training Monitor of the European Commission, Portugal has significantly reduced its early school leaving rate, and tertiary education attainment has greatly improved. Enrolment in vocational education and training has continued to increase and a first set of new short-cycle higher technical courses (TeSP) were launched during the 2014–15 academic year. In its observations, the UGT indicates that investment dropped with respect to continuing vocational training and retraining, as well as recognition and validation of competencies acquired. In addition, the UGT indicates that there is widespread non-compliance on the part of employers, who do not observe the workers' right to 35 annual hours of vocational training. The UGT adds that this has had a significant impact due to the large number of adults in the labour market that have not completed secondary education. The UGT also points out that the IEFP lacks the necessary human resources to ensure its proper functioning. Finally, the CGTP–IN indicates that the CQEP does not function properly due to its limited number and lack of staff. The UGT adds that it is necessary to provide vocational training services for the employed through the public employment services, and to develop a statistical information system in relation to vocational training. ***The Committee requests the Government to continue to provide updated information, including statistical data disaggregated by age and sex on the impact of the policies and programmes implemented in relation to vocational guidance and training.***

*Article 5. Cooperation of the social partners.* In reply to the Committee's previous comments, the Government indicates that employers' and workers' organizations participate in the Standing Committee for Social Dialogue of the Economic and Social Council with regard to the formulation of policies and programmes of vocational guidance and vocational training. Furthermore, the social partners participate in the adoption of the strategic action plan of the IEFP and of the Vocational Training and Employment Centres through their respective Advisory Councils at the regional and local levels. Finally, the Government indicates that the social partners are members of the Coordinated Committee charged with the implementation and evaluation of the Youth Guarantee Programme. In its observations, the CGTP–IN requests the reestablishment of the National VET Council, which was the body responsible for the formulation, coordination and implementation of vocational training policies and programmes. The CGTP–IN and the UGT further indicates that the social partners are consulted within the cited bodies, but they do not have the capacity to influence the policies and programmes of vocational guidance and vocational training. ***The Committee requests the Government to provide more specific information on the manner in which the representative organizations of employers and workers have been consulted in the formulation, implementation and monitoring of vocational training and vocational guidance policies and programmes.***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 140** (*Montenegro, Netherlands: Aruba, Russian Federation, San Marino, Slovakia*); **Convention No. 142** (*Guyana, India, Kyrgyzstan, Lebanon, Netherlands: Aruba*).

## Employment security

### Australia

#### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1993)**

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) received on 31 August 2016.

*Article 2(2)(b) of the Convention. Exclusion of workers serving a qualifying period of employment.* The ACTU continues to express concerns regarding the time limits for lodging claims for unfair dismissal and unlawful termination. It also considers that the Small Business Fair Dismissal Code provides less protection from unfair dismissal for small business employees – those employed in businesses employing less than 15 workers – from unfair dismissal in comparison with the Fair Work Act, 2009 (FWA), as small business employees are required to complete a 12-month qualifying period of employment while other employees are subject only to a six-month qualifying period before becoming eligible for protection against unfair dismissal. The ACTU also reiterates its view that the FWA provides insufficient safeguards against redundancy and precarious forms of employment. In reply to the Committee's previous request and the ACTU's observations concerning the continuing existence of different rules for small business employees, the Government indicates that the Fair Work Commission (FWC) has continued to apply the FWA to extend protection against unfair dismissal to temporary, probationary and casual employees in a number of cases alleging unfair dismissal. The Committee notes the FWC rulings provided by the Government, in which casual employees employed on a regular and systematic basis were deemed to have satisfied the minimum period of employment and were recognized as protected persons within the meaning of the FWA. Responding to the ACTU's observations regarding the 12-month qualifying period for small business employees, the Government indicates that the Productivity Commission's report of the public inquiry undertaken in 2014 was released in 2015. The report evaluated the performance of the workplace relations framework – including the FWA – and made recommendations for improvement. The Government indicates that retaining the requirement of a 12-month qualifying period before small business employees may be protected under the unfair dismissal laws is necessary to balance the needs of small business employees for protection from unfair dismissal against the resourcing difficulties faced by small businesses, which require them to screen and verify the performance of new employees over a longer period of time. It adds that, as small enterprises frequently employ workers at the margins of the labour market – who may be particularly vulnerable to stricter employment protection – the extension of the probationary period for such businesses constitutes a “regulatory tiering” through which compliance burdens may be reduced without substantively reducing compliance. In contrast, the ACTU considers that this lengthier qualifying period has the effect of excluding a substantial number of employees from unfair dismissal protection. It points out that, of the 11.98 million employees employed by small businesses in May 2016, 2.3 million had been with their current employer for less than 12 months, of which a significant percentage were low-skilled laborers and persons from other vulnerable groups, such as young workers (aged 15–34). ***The Committee requests the Government to provide detailed information regarding the measures taken or envisaged to implement the recommendations of the Productivity Commission relevant to the application of the Convention. It also requests the Government to communicate data disaggregated by economic sector, on the number of small business employees dismissed after completing six and 12 months of employment, respectively, as well as the number of large business employees dismissed after completing six and 12 months of employment.***

*Article 2(3). Adequate safeguards against recourse to contracts of employment for a specified period of time.* The Committee notes the Government's reply to its previous request in which it addressed the ACTU's concerns about recourse to precarious forms of employment as a means of avoiding the protection resulting from the Convention. The Government indicates where an employment contract is for a specified period of time, a specified task or for the duration of a specified season, and the employment has terminated at the end of the specific period, task or season, unfair dismissal protections do not apply. It adds that if the termination occurs before the end of the period, task or season specified, the employee may still access remedies against unfair dismissal, provided they have satisfied the relevant requirements, such as completing the minimum qualifying employment period (six months for employees of larger enterprises and 12 months for small businesses). The Government indicates that, moreover, section 123(2) of the FWA provides that exclusions will not be applied to employees who are ostensibly engaged on a fixed-term contract if a substantial reason for engaging them on such a contract or series of contracts is to avoid notice of termination and redundancy entitlements. In such circumstances, employees will be deemed to fall within the scope of the unfair dismissal legislation (citing *Hope v Rail Corporation New South Wales* [2014] FWC 42 (3 January 2014)). In addition, the Government indicates that the FWA provides safeguards against “sham contracting arrangements” (understood as the misrepresentation of a person in an employment relationship as an independent contractor), prohibiting an employer from dismissing or threatening to dismiss an employee in order to hire him or her as an independent contractor to perform the same or substantially the same work. ***The Committee requests the Government to indicate the measures taken or envisaged in all states and territories to ensure the provision of adequate safeguards against recourse to contracts of employment for a specified period of time in order to avoid the protections provided under the Convention. It further requests the Government to continue to provide examples of decisions issued by the FWC or other relevant bodies with regard to contracts of employment for a specified period of time.***

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

## Cameroon

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)**

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), received on 17 October 2016, and the Government's reply, received on 15 February 2017. It also notes the observations of the Cameroon United Workers Confederation (CTUC), received on 22 November 2016. *The Committee requests the Government to provide its comments in this regard.*

*Article 2 of the Convention. Exclusions.* In its previous comment, the Committee noted the Government's indications that domestic workers and workers in the informal economy belong to the categories of workers that are subject to special regulations or a special scheme. The Government added that workers subject to special regulations are not considered as workers covered by the Labour Code of 1992. The Committee therefore asked the Government to continue to take all possible steps to ensure that domestic workers and workers in the informal economy enjoy adequate protection in the spheres covered by the Convention. The Government indicates in its report that the Convention is applied uniformly in Cameroon and that no category of wage employees is excluded from its scope. *The Committee requests the Government to provide copies of the legislative texts that apply to domestic workers in relation to the Convention. The Committee also requests the Government to provide detailed information on the manner in which it ensures adequate protection in the spheres covered by the Convention to workers in the informal economy.*

*Article 8. Procedure of appeal.* The Committee notes the observations of the CTUC, which considers that the terminations of workers in certain enterprises were not in conformity with the procedure established under national legislation, since no authorization for termination had been sought or granted by the labour inspector. *The Committee requests the Government to reply to the observations of the CTUC regarding the termination of workers' employment.*

*Article 11. Notice period.* The Committee notes the observations of the CTUC indicating that, in practice, employers terminate the employment of workers without observing the obligation to give a notice period as established by section 34(1) of the Labour Code. The Committee notes that the Government's report does not reply to the CTUC's concerns. *The Committee reiterates its request that the Government provide its comments on the observations of the CTUC, indicating the manner in which it is ensured that workers are provided with reasonable notice of termination.*

*Article 12(3). Definition of serious misconduct.* The Committee previously noted that serious misconduct was not defined by the Labour Code but by case law. The Committee notes the observations of the CTUC indicating that, in national practice, the employer unilaterally defines the degree of seriousness of the misconduct, whereas under Cameroonian law only the judge is empowered to do so. The CTUC adds that a number of companies have engaged in this practice and therefore invites the Government to revise the Labour Code. *The Committee requests the Government to reply to the observations of the CTUC, clarifying the definition of serious misconduct. It also requests the Government once again to provide examples of court decisions which allow an evaluation of the application of Article 12(3) of the Convention.*

*Articles 12–14. Severance allowance. Consultation of workers' representatives. Terminations of employment for economic, technological, structural or similar reasons.* In its previous comments, the Committee asked the Government to indicate whether the dismissed workers had been paid their severance allowance and to provide information on all measures taken to alleviate the adverse effects of dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). The Government indicates in its report that section 40 of the Labour Code of 1992 refers to this subject. Accordingly, the Committee notes that section 40(3) of the Labour Code establishes an obligation for the employer to call a meeting of staff delegates and the labour inspector to try to avoid any termination on economic grounds. It also notes that section 40(9) of the Labour Code provides that any worker whose employment has been terminated shall be given priority status, where skill levels are equal, for two years with regard to recruitment in the same enterprise. As regards consultation of workers' representatives in the event of terminations on economic grounds, the Government indicates that Order No. 22/MTPS/SG/CJ establishing procedures governing terminations on economic grounds gives effect to *Article 13(1)* of the Convention. In its previous comment, the Committee noted the communication from the UGTC indicating the termination of the employment of a number of young persons at the National Social Security Fund (CNPS) without prior notification in writing or payment of damages. In its observations of 2016, the UGTC indicates that the situation of the dismissed CNPS workers has not changed and that there has been a resurgence of terminations, particularly in a number of local companies. *Referring to its previous comments, the Committee requests the Government once again to indicate whether the workers dismissed from the CNPS and from the local companies referred to in the observation of the UGTC have been paid their severance allowance. It also requests the Government to send a copy of Order No. 22/MTPS/SG/CJ establishing procedures governing terminations on economic grounds. The Committee further requests the Government to continue providing information on any measures taken to alleviate the adverse effects of dismissals, such as those envisaged in Paragraphs 25 and 26 of Recommendation No. 166.*

*Application of the Convention in practice.* *The Committee requests the Government once again to supply statistics on the activities of the appeal bodies and the number of terminations on economic grounds. It also requests*

*the Government to provide up-to-date information on the application of the Convention in practice. Referring to its previous comments on valid and invalid grounds for termination and the defence procedure prior to termination, the Committee requests the Government to send examples of court decisions which allow an evaluation of the application of Articles 4, 5 and 7 of the Convention.*

*[The Government is asked to reply in full to the present comments in 2019.]*

## Democratic Republic of the Congo

### Termination of Employment Convention, 1982 (No. 158) (ratification: 1987)

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Observations by the Labour Confederation of Congo (CCT). Abusive dismissals.* The CCT expresses concern at a collective labour dispute which involved the massive, abusive and unlawful dismissal of around 40 employees of a private multinational enterprise governed by French law, in which the public authorities are reported to have let the situation deteriorate, disregarding the provisions of the Convention. The CCT also refers in this context to the wilful violation by the employer of the OECD Guidelines for Multinational Enterprises, and particularly those on employment and industrial relations. The Committee notes that the CCT called on the authorities to ensure the reinstatement of workers subjected to abusive and unlawful dismissal and the application of the provisions of the Convention respecting severance allowances and collective dismissals. *The Committee invites the Government to provide its own comments on the observations of the CCT. It hopes that the Government will be in a position to indicate whether the dismissals referred to were based on valid reasons (Article 4 of the Convention) and whether the dismissed workers were entitled to severance allowances (Article 12). It also requests the Government to provide information on the measures adopted to mitigate the effects of the dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).* It recalls that the ILO can provide assistance to promote the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

In reply to the previous comments, the Government has provided the relevant provisions of Act No. 13/005 of 15 January 2013 issuing the conditions of service of military members of the armed forces of the Democratic Republic of the Congo (Article 2(4) of the Convention). *The Committee once again invites the Government to provide a report containing information on the practice of the labour inspectorate and the decision of the courts on matters of principle relating to the application of Articles 4, 5 and 7 of the Convention. Please indicate the number of appeals against termination, their outcome, the nature of the remedy awarded and the average time taken for an appeal to be decided (Parts IV and V of the report form).*

*Article 7. Procedure prior to, or at the time of, termination.* The Government has provided the text of the national interoccupational collective agreement of December 2005, which does not appear to envisage the possibility of a specific procedure to be followed prior to, or at the time of, termination, as required by the Convention. *The Committee once again invites the Government to provide copies of collective agreements which have provided for this possibility and to indicate in its next report the manner in which this provision of the Convention is given effect for workers not covered by collective agreements.*

*Article 12. Severance allowance and other income protection.* The Government indicates in its report that section 63 of the Labour Code of 2002 protects employment and recommends reinstatement in the event of the abusive termination of the employment contract. In the absence of reinstatement, damages are set by the labour tribunal. The Committee emphasizes that this method of compensating unjustified termination, namely through the granting of damages by the court, is covered more by Article 10 of the Convention, which envisages the payment of adequate compensation or such other relief as may be deemed appropriate. The severance allowance, which is one form of income protection, needs to be distinguished from damages paid in the event of unjustified termination. Under the terms of Article 12 of the Convention, a worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to either a severance allowance or other separation benefits; or to benefits from unemployment insurance or assistance or other forms of social security; or a combination of such allowance and benefits. The Committee recalls its previous comments and notes that the Labour Code does not specify the severance allowance which is to be paid to workers, in accordance with Article 12 of the Convention. *The Committee once again invites the Government to indicate the manner in which effect is given to Article 12 of the Convention.*

*Articles 13 and 14. Terminations for economic or similar reasons.* The Government indicates that the Ministry of Employment, Labour and Social Welfare signed 15 orders authorizing collective terminations for economic or similar reasons, covering 701 workers in 2012–13. *The Committee invites the Government to indicate whether the dismissed workers were entitled to severance allowances (Article 12). It hopes that the Government will also be in a position to provide information on the measures taken to mitigate the effects of these terminations, as envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).*

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

## Papua New Guinea

### Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)

*Article 1 of the Convention.* For a number of years, the Committee has requested information concerning the ongoing revision of the Industrial Relations Bill which, according to the Government's 2013 report, includes provisions on termination of employment with the objective of giving effect to the Convention. In its reply to the Committee's previous comments, the Government indicates that the draft Industrial Relations Bill is still pending with the Department of Labour and Industrial Relations and is undergoing final technical consultations. The Government adds that the Department of Labour and Industrial Relations Technical Working Committee has carried out various consultations with national stakeholders, such as the Department Attorney General's Office, the Office of the Solicitor General, the Constitution Law Reform Commission, the Department of Personnel Management, the Department of Treasury and the

Department of Planning, Trade Commerce and Industry, as well as with external technical partners, including the ILO. **Referring to its previous comments, the Committee once again expresses the hope that the Government will take the necessary measures to ensure that the new legislation gives full effect to the provisions of the Convention. It also reiterates its request that the Government provide a detailed report to the ILO and a copy of the legislation as soon as it is enacted, so as to enable the Committee to examine its compliance with the Convention.**

*[The Government is asked to reply in full to the present comments in 2018.]*

## Portugal

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1995)**

The Committee notes the observations of the General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN) and the General Workers’ Union (UGT), forwarded by the Government. **The Committee requests the Government to provide its comments in this regard.**

*Legislative developments.* In reply to the Committee’s comments, the Government indicates that certain minor legislative developments relating to termination of the employment relationship in the public service were made during the reporting period. The Government indicates that the termination of the employment relationship of workers in the public sector is now governed by sections 288–313 of the General Public Service Labour Act (Act No. 35/2014), which entered into force on 1 August 2014. However, the Government indicates that this legislative change did not give rise to any substantive reform. The Government emphasizes that section 11(1) of Act No. 35/2014, which determines the transitional regime, provides that the disciplinary provisions are immediately applicable to acts committed, proceedings initiated and penalties that are being served if, at the date of entry into force, that regime is more favourable to the worker and offers better guarantees to protect the worker’s rights to defence and a hearing. **The Committee requests the Government to continue providing information to enable it to assess the impact of the legislative reforms in respect of the maintenance of employment.**

*Article 2(3) of the Convention.* *Adequate safeguards in the event of recourse to contracts of employment for a specified period.* In its previous comments, the Committee requested the Government to provide information on the protection afforded to workers with contracts for a specified period, and to indicate the number of workers affected by these measures. In its report, the Government refers to the papers produced by the Strategy and Planning Office of the Ministry of Labour, Solidarity and Security. In this regard, the Committee notes that the document entitled “Green Paper 2017” contains statistics on contracts for a specified period, according to which it is estimated that in 2015 a total of 62.9 per cent of unemployment insurance benefits (111,682 workers) were provided as a result of the expiry of the contract period. The Committee also notes the information contained in that paper that the unemployment benefits provided to persons with contracts for a specified period are increasing, as in 2009 they accounted for 46.2 per cent of total unemployment benefits, compared with 62.9 per cent in 2015. **The Committee once again requests the Government to provide information on the manner in which the protection afforded by the Convention is ensured to workers who have concluded an employment contract for a specified period, with a view to preventing abusive recourse to such contracts, including the relevant court rulings. It also requests the Government to continue providing information, including data on the total number of contracts for a specified period of time in comparison with contracts for an indefinite period.**

*Article 2(5). Micro-enterprises.* The Committee notes that the Government’s report does not contain any information on this subject. **The Committee once again requests the Government to provide information on the application of the Convention to micro-enterprises.**

*Article 4. Justification for termination.* The Committee previously requested the Government to provide examples of the application of the legislative amendments of 2014 regarding the valid reason for termination of employment on the grounds of the reduction of jobs or dismissals for unsuitability. The CGTP–IN and the UGT reiterate that, by placing criteria of performance, qualifications and labour costs above the criteria of seniority and experience, Act No. 27/2014 does not ensure objectivity and allows an arbitrary choice of workers by the employer, as the choice may be made for the benefit of the enterprise. They add that these criteria do not safeguard employment security, the prohibition of dismissal except with a valid reason, the principle of equality and non-discrimination, as workers with greater seniority are affected by this provision. The Committee notes that, according to the statistics contained in the “Green Paper of 2017”, dismissal by a reason of the suppression of jobs and dismissal for unsuitability have decreased, as in 2015 they accounted for 8.7 and 0.3 per cent respectively of unemployment insurance benefits. The Committee also notes the court rulings provided by the Government relating to termination of employment on grounds of the suppression of the job. Nevertheless, it observes that these court decisions do not illustrate the legislative changes introduced by Act No. 27/2014. **The Committee requests the Government to provide copies of court rulings with its next report which illustrate the application by the courts of the criteria set out in Act No. 27/2014.**

*Article 8. Right of appeal.* The Committee notes that the Government has not provided information in its report on the legislative provisions governing claims for unjustified dismissal, or on the role of mediation and arbitration. The Committee notes that court decisions relating to dismissal and collective dismissal are regulated by sections 387 and 388 of the Labour Code. It also notes that the Labour Code envisages mediation and arbitration solely in collective labour

disputes arising out of the conclusion of a collective agreement (section 526 et seq. of the Labour Code). The Committee further notes the statistics contained in the “Green Paper” on the cases of dismissal determined by courts of first instance. In this respect, it notes that in 2015 a total of 5,529 appeals against dismissal were resolved by courts of first instance, and that in 2013 the average period for their settlement through ordinary procedures was 16 months. ***The Committee requests the Government to provide information on the application of the legislative provisions respecting appeals against unjustified dismissal. It also requests the Government to indicate whether alternative means of dispute resolution are available for workers who have been dismissed.***

*Article 10. Adequate compensation for unjustified dismissal.* The Committee notes that section 389(2) of the Labour Code provides that, when the court finds that dismissal is unjustified, but that the irregularity is strictly procedural, the worker shall receive half of the compensation envisaged by the law. ***The Committee requests the Government to provide court rulings which illustrate the application in practice of section 389(2) of the Labour Code.***

*Article 12. Severance allowance and other income protection measures.* The CGTP-IN reiterates that compensation for the termination of the employment contract has been drastically reduced and that, in the current economic situation characterized by a high unemployment rate and the reduction in the amount and duration of unemployment benefit, this reduction is in violation of the right of workers to a decent life. In this regard, the Committee notes that section 366(1), as amended by Act No. 69/2013, which is applicable to almost all cases of termination of employment which give entitlement to compensation, sets the severance allowance at 12 days’ basic wages and benefits for each full year of seniority. The Committee also notes that, in the case of employment contracts for an indefinite period, workers are entitled to compensation during the first three years equivalent to 18 days of their basic wage and benefits for each full year of seniority, and 12 days of their basic wage and benefits for subsequent years. ***The Committee requests the Government to provide information on the implementation of this provision in practice, including on the impact of the change in severance payments for the workers concerned, and to provide statistical data, disaggregated by age and sex, concerning workers affected by this measure.***

## Sweden

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1983)**

The Committee notes the observations made by the Swedish Confederation for Professional Employees (TCO), the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Associations (SACO), received on 21 September 2016.

*Article 2(3) of the Convention. Adequate safeguards against recourse to contracts of employment for a specified period of time.* The Committee notes with ***interest*** the information provided by the Government concerning amendments to the Employment Protection Act (EPA), which came into force on 1 May 2016. The amendments introduced additional safeguards against recourse to employment contracts for a specified period of time. Pursuant to the 2016 amendments, the employment contract of a worker employed under successive fixed-term contracts for a period of more than two years over a five-year period will be converted into a contract for an indefinite period of time. This rule applies not only to general fixed-term employment contracts, but also to successive contracts of employment to replace another worker, as well as to contracts for seasonal employment. The Government adds that the EPA’s provisions on conversion of fixed-term contracts to contracts of indefinite duration do not apply to workers aged 67 and over. The Committee notes that under the amendments to the EPA, workers on fixed-term contracts are entitled to request written information from the employer relevant to facilitate a determination of whether the employee is entitled to conversion of his or her fixed-term contract into a contract of indefinite duration. ***The Committee requests the Government to provide detailed information on the application in practice of the 2016 amendments to the Employment Protection Act establishing additional safeguards against abusive recourse to contracts of employment for a specified period of time, including information on the number of workers benefitting from these measures.***

*Article 5(c). Invalid reasons for termination.* The Committee notes with ***interest*** the information provided by the Government concerning the adoption of the Act on special protection for workers against reprisals for whistleblowing regarding serious irregularities, which entered into force on 1 January 2017. The Government indicates that, while workers with permanent contracts already enjoy considerable protection against unjustified dismissal, the Act extends protection against reprisals to employees engaged as temporary agency workers who denounce serious irregularities in the activities of the company that hires them. The Act entitles workers who have been subjected by their employer to reprisals for whistleblowing to lodge a claim against the employer for damages. Where the whistleblowing is in-house (relating to the company where the worker is engaged), it is sufficient for specific suspicions of irregularities to exist for protections against reprisals to apply. Where the whistleblowing is external (where the information is supplied for public disclosure or to a public authority), the worker is required to have good reason for making the allegations. The protection that the Act offers against reprisals does not apply where a worker has committed a crime by whistleblowing. ***The Committee requests the Government to provide information on the reasons for the differentiated standard of protection against reprisals – including dismissals – for internal as opposed to external whistleblowers under the 2017 Act on special protection for workers against reprisals for whistleblowing regarding serious irregularities. The Committee further requests***

**information on the number of complaints of unfair dismissal for whistleblowing, the applicable burden of proof, and extracts of relevant judicial decisions.**

*Article 12. Severance allowance and other income protection.* The Committee notes the adoption of amendments to the Unemployment Insurance Act, which entered into force on 1 September 2013. The Government indicates that the amendments extend the general conditions for entitlement to unemployment insurance fund benefits (section 9), and that the eligibility period in the case of a worker suspended from employment due to improper conduct, has been reduced from 60 to 45 days (section 43(b)(2)). **The Committee requests the Government to provide information on the manner in which the amendments to the Unemployment Insurance Act are applied in practice.**

*Application of the Convention in practice.* The Committee notes the Government's indication that, according to the Act Concerning Certain Measures to Promote Employment, employers are required to notify the Employment Service (*Arbetsförmedlingen*) if the employer needs to implement reductions in activities that involve at least five employees in the county. In this regard, the Government indicates that, in the first half of 2016, the Employment Service received a total 19,509 notices of termination of employment, covering 10,083 workplaces. The Government further indicates that, between July 2011 and April 2016, the Equality Ombudsman received 500 reports concerning termination of employment. **The Committee requests the Government to continue providing detailed information on the manner in which the provisions of the Convention are applied in practice, including extracts of judicial decisions involving questions of principle relevant to the Convention, available statistics on the activities of the Labour Courts and of the Discrimination Ombudsman, as well as on the number of terminations for economic or similar reasons.**

## **Bolivarian Republic of Venezuela**

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)**

The Committee notes the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), dated 30 August 2017. It also notes the observations, dated 18 September 2017, by the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA). **The Committee requests the Government to provide its comments in this regard.**

*Article 8 of the Convention. Remedies against unjustified dismissal.* In response to its previous comments, the Government reiterates that there are two types of stability of employment: relative and absolute stability. The Committee notes the Government's response indicating that through executive decrees, employment security was granted to workers with more than 30 days' seniority who were not employed in managerial positions. The Committee notes that, under section 94 of the Basic Labour Act (LOTTT), workers protected by employment security cannot be dismissed, transferred or demoted without justified grounds, which must first be approved by a labour inspector. In this respect, the Committee notes that this procedure is laid down in section 422 of the LOTTT, which provides that the labour inspector's decision is final, unless the parties assert their right to file an administrative appeal with the competent labour courts. The Government also refers to section 425 of the LOTTT, which provides that, when a worker covered by trade union protection or by employment security is dismissed, transferred or demoted, within a period of 30 consecutive days he or she may submit a complaint to the labour inspectorate requesting reinstatement and the payment of any unpaid wages, and that the decision of the labour inspector regarding reinstatement or redress of the situation of a protected worker is final. In this respect, the Committee notes that the authorities do not proceed with an administrative appeal to set aside the dismissal until the administrative authority has certified that the order of reinstatement or redress of the legal situation has been effectively implemented (section 425(9) of the LOTTT). The IOE and FEDECAMERAS consider that the legal provisions on employment security and the procedures for the approval of dismissals and for reinstatement are not effective. They add that no mechanisms have been established by law or regulations to guarantee the objectivity and impartiality of the procedures for the approval of dismissals nor to guarantee the right to defence and due process for employers. In this respect, the Committee recalls that, under *Article 9(1)* of the Convention, only impartial bodies such as the courts, labour courts and arbitration boards should be able to examine the reasons given to justify the termination of an employment relationship and all other circumstances related to the case, and to determine whether the termination was justified. In addition, in its report, the Government indicates, with regard to the case previously referred to by the trade unions of the dismissal of 972 workers in toll stations belonging to the Ministry of Transport, that, of the 71 toll stations in the country, only 21 remain in operation, and that in 2014 the management of those toll stations was transferred to the governors' offices, under the direction of the Department for Land Transport and Public Works (*Official Gazette* No. 40.577). **The Committee requests the Government to specify the manner in which it guarantees, for employers and workers, the impartiality of the labour inspectorate when effectively certifying a reinstatement order under the terms of section 426(9) of the LOTTT. In addition, it requests the Government to indicate the number of times that an appeal to set aside a dismissal has been filed and the number of times it was upheld. Lastly, the Committee requests the Government to indicate, with regard to the 972 workers who were dismissed, whether they were reinstated in their posts.**

*Application of the Convention in practice.* The Government indicates that, at the national level and up to the third quarter of 2017, a total of 27,214 complaints procedures were initiated against dismissals, transfers and demotions

and 13,244 procedures for the approval of dismissals were submitted to the labour inspectorate. Furthermore, the Government indicates that, from January to July 2017, 9,989 decisions were issued on complaints against dismissals, transfers and demotions, and 5,150 dismissal procedures were authorized. The Committee notes that only 41 per cent of the cases pending between 2006 and 2015 were resolved, which is why the Government has implemented two plans aimed at reducing cases of contempt of court and delays: (i) the plan for the restoration of rights and liabilities in cases of insolvency in the registration system for insolvencies and restructuring (SIRIS), implemented in 2017, which aims to reduce the number of cases of non-compliance with the administrative procedures for reinstatement. In this respect, the Government indicates that during the first 12 weeks of implementation, 6,575 reinstatement orders were issued; and (ii) the Update Plan, which aims at taking action to prevent procedural delays and to follow-up cases in order to prevent non-compliance. In this respect, the Government indicates that, since this plan was implemented, decisions have been issued on 12,139 cases relating to the restoration of rights and 2,684 relating to approvals for dismissals in cases that were pending between 2006 and 2015. The Committee notes the observations of the IOE and FEDECAMERAS indicating that no new labour inspectorates have been established to lighten the workload in processing the approval of dismissals and that neither the statistics nor the Government's follow-up mechanisms are effective or accessible. *The Committee requests the Government to continue providing updated information on the number of dismissals, the number of reinstatements ordered by the labour inspectorate and the number of cases in which the labour courts have upheld reinstatement orders. The Committee also requests the Government to provide information on the impact of the plan for the restoration of rights and liabilities in cases of insolvency and the Update Plan in terms of the reduction of delays and cases of non-compliance.*

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 158** (*Antigua and Barbuda, Australia, Bosnia and Herzegovina, Central African Republic, Cyprus, Ethiopia, France, Gabon, Latvia, Luxembourg, Malawi, Montenegro, Morocco, Namibia, Niger, Saint Lucia, Slovenia, The former Yugoslav Republic of Macedonia, Uganda, Ukraine, Yemen*).

## Wages

### Algeria

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1962)

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* In its previous comment, the Committee requested the Government to take the necessary additional measures in the near future to ensure the full application of the Convention and to keep the Office informed of any further developments in this respect. The Committee notes that the Government has approved new regulations for public contracts implemented by Presidential Decree No. 15-247, of 16 September 2015, governing public contracts and public service delegation contracts, which entered into force on 20 December 2015. The Committee notes that these new regulations do not give full effect to *Article 2* of the Convention, which provides that public contracts shall include clauses specifically ensuring to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established either by collective agreement, by arbitration award or by national laws or regulations. Furthermore, the “internal regulations” to which the Government refers in its report, under which the employer is required to set out the rules regarding the technical organization of the work, occupational safety and health and discipline, are not sufficient to ensure the full application of *Article 2* of the Convention. In this context, the Committee recalls its previous comments, in which it emphasized that the Convention also requires the fulfilment of other obligations, namely consultation of the employers’ and workers’ organizations concerned with respect to the terms of the labour clauses (*Article 2(3)*); the posting of the applicable conditions of work in the workplace, including the wages paid, and not only, as indicated in the Government’s report, the hours of work, periods of closure for leave and safety instructions, all with a view to duly informing the workers involved (*Article 4*); and, in the event of failure to observe and apply the labour clauses, adequate penalties such as the withholding of public contracts or payments to the enterprises concerned (*Article 5*). In this respect, the Committee notes that the Decree of 19 December 2015, to which the Government refers in its report, does not give effect to *Article 5* of the Convention and concerns corruption rather than the working conditions of workers. **The Committee therefore once again requests the Government to take the necessary measures to give full effect to the Convention with particular attention to the requirements of consultation, adequate notice and dissuasive sanctions, as mentioned above and to provide the Office with information on any further developments.**

### Plurinational State of Bolivia

#### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)**

The Committee notes the joint observations of the Confederation of Private Employers of Bolivia (CEPB) and the International Organisation of Employers (IOE).

*Articles 3 and 4(2) of the Convention. Elements for the determination of the level of minimum wages and full consultation with the social partners.* The Committee notes that, in reply to its previous comments, the Government indicates in its report that: (i) the national minimum wage was increased for 2017 by Supreme Decree No. 3161 of 1 May 2017; (ii) the socio-economic factors taken into consideration in determining the national minimum wage include inflation, productivity, gross domestic product (GDP), GDP per capita, the consumer price index, economic growth, unemployment rates, market fluctuations and the cost of living; (iii) in contrast with the Bolivarian Central of Workers, which explicitly asked to participate in decision-making in relation to the determination of the minimum wage, the CEPB did not officially ask to be part of the decision-making before raising the matter with the ILO; (iv) the Government held a meeting with representatives of the CEPB, during which they called for the immediate application of measures to address the effects of the increase in the minimum wage; and (v) round-table meetings were established to assess the appropriate follow-up action to those requests. On the other hand, the Committee notes the indication by the CEPB and the IOE in their observations that: (i) there are no quantitative methods for the determination of the national minimum wage and the Government does not consult employers’ organizations for the development of a system of adjustment based on measurable and foreseeable criteria; (ii) the increase in the national minimum wage for 2017 was arbitrary, as it exceeded the annual inflation rate and disregarded variables such as economic development, productivity levels, the promotion of higher rates of decent employment of a better quality, the sustainability of enterprises and the need to attract investment; and (iii) once again in 2017, employers’ organizations were not included in consultations on the determination of the minimum wage. **Recalling once again: (i) that the Convention requires the full consultation of the representative organizations of employers and workers concerned for the establishment, operation and modification of machinery for the fixing and adjustment from time to time of minimum wages (Article 4(2)); and (ii) the active participation of these organizations is essential to allow optimal consideration of all the relevant factors in the national context (see General Survey on minimum wage systems, 2014, paragraph 285), the Committee urges the Government to take measures without delay, in consultation with the social partners, to ensure their full and effective participation in the fixing and adjustment of the minimum wage.**

*[The Government is asked to reply in full to the present comments in 2019.]*

## **Bulgaria**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1955)**

The Committee notes the observations made by the Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB) received on 1 September 2016. *The Committee requests the Government to provide its comments in this respect.*

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* In its previous comments, the Committee asked the Government to take without further delay all necessary action in order to give full effect to the Convention and to keep the Office informed of any progress made in this regard. In this context, the Committee takes note with *interest* of the adoption of the new Public Procurement Act (PPA), which entered into force on 15 April 2016. In its observations, the CITUB indicates that the PPA seeks to establish a new regulatory framework aligned with the EU Directive 2014/24/EC on public procurement. The CITUB adds that it participated actively in the discussions on the draft PPA and expresses its satisfaction with the text adopted, which it considers to be in conformity with the provisions of the Convention. The Government indicates that the PPA aims to increase the efficiency of public spending as well as to use public procurement to support common goals of a public nature, including implementation of labour law measures. The Committee notes the Government's statement that section 115 of the PPA requires contractors and their subcontractors to observe all applicable rules and requirements, related to environment protection, social and labour law, applicable collective agreements and provisions of international environmental, social and labour law listed in Annex 10 and section 107(2) of the PPA. Moreover, the Government indicates that, according to section 47(1)–(3) of the PPA, the contracting authorities are entitled to include specific conditions for implementing the contract relating to employment protection and working conditions in force in the country. The Committee notes that contracting authorities are not merely entitled to include labour clauses in public contracts, but that this is the central obligation under *Article 2* of the Convention. In its General Survey concerning Labour Clauses in Public Contracts, 2008, paragraph 40, the Committee stated that “the essential purpose of Convention No. 94 and Recommendation No. 84 is to ensure that workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts.” The Committee takes notes of the Government's indications regarding section 32 of the PPA, which stipulates that contracting authorities shall provide unlimited, complete, free and direct access through electronic media to the documentation for public procurements. With regard to the obligation of ensuring effective enforcement through a system of inspection and adequate sanctions, the Government indicates that, according to section 175(5) of the PPA, the contracting authority is entitled to reject subcontractors if they do not meet the selection criteria specified in the notice and documentation, including the requirements relating to labour law. In its observations, the CITUB notes that the PPA guarantees that candidates who have infringed the provisions of the labour law relating to wages in implementing a public contract will be excluded from public procurement procedures. It expresses its concern that the PPA does not apply the same requirements to subcontractors as to contractors, and that therefore workers employed by subcontractors may not have sufficient protection of their salary and contributions. *The Committee requests the Government to indicate the manner in which it is ensured that labour clauses of the type specified in Article 2 of the Convention are contained in all public contracts falling within the scope of Article 1 of the Convention and that they ensure to the workers of contractors or subcontractors payment of wages and other working conditions not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations. The Committee requests the Government to transmit copies of standard bidding documents currently in use. It also requests the Government to indicate the measures taken to ensure the posting of notices in conspicuous places at the workplace with a view to informing the workers of their conditions of work.*

*Application of the Convention in practice. Labour inspection.* *The Committee requests the Government to provide information on the manner in which the Convention is applied, including statistics on the number of inspections, the number and type of infractions detected and the sanctions applied.*

## **Burundi**

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)**

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), received in 2015, requesting once again the revision of the inter-occupational guaranteed minimum wage (SMIG), in the light of the cost of living.

*Article 3 of the Convention. Operation of the minimum wage-fixing machinery.* Further to its previous comments in this respect, the Committee notes the Government's reiteration in its report that the matter of readjusting the minimum

wage will be submitted to the social partners, as part of the ongoing revision of the Labour Code. However, pending the receipt of information on progress made in this respect, the Committee is bound to note with *concern* that the last decree fixing the SMIG was issued in 1988. ***It therefore urges the Government to take all the necessary measures to immediately reactivate the minimum wage review process, as provided for in section 249 of the Labour Code (annual revision by the National Labour Council), and to carry out a readjustment of the SMIG in the light of this review.***

*[The Government is asked to reply in full to the present comments in 2018.]*

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1963)**

*Article 2 of the Convention. Inclusion of labour contracts in public contracts.* In its previous comments, the Committee asked the Government to take the necessary steps to bring the legislation into full conformity with the Convention. The Committee notes that, further to the entry into force of Act No. 1/01 of 4 February 2008 issuing the Public Procurement Code, the Government has not adopted any new measures in this respect. The Government indicates in its report that Presidential Decree No. 100/49 of 11 July 1986, concerning specific measures to be taken to guarantee minimum conditions for workers employed under a public contract, and also Decree No. 110/120 of 18 August 1990, concerning the general conditions of contracts, have ceased to apply with the entry into force of the Public Procurement Code. The Government makes no reference to the adoption of any new measures to guarantee protection for conditions of work during the performance of public contracts but refers more generally to the Labour Code. The Committee recalls paragraph 45 of its General Survey of 2008 on labour clauses in public contracts, in which it considered that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in *Article 2(1)* of the Convention, whether for construction work, the manufacture of goods or the provision of services, since the general labour legislation only establishes minimum standards, which are often improved through collective agreements or arbitration awards. The Committee recalls that the main stipulation of *Article 2* of the Convention is that all public contracts coming within the scope of *Article 1* of the Convention must contain labour clauses, whether or not these contracts are assigned through a bidding process. ***The Committee requests the Government once again to adopt the necessary measures without delay to ensure the inclusion of labour clauses in all public contracts to which the Convention is applicable, in accordance with Article 2 of the Convention. The Committee also requests the Government to send a copy of the new general conditions governing contracts and to indicate the measures taken or contemplated to ensure minimum conditions for workers employed under a public contract, once such measures have been adopted.***

## **Cameroon**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)**

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), received on 17 October 2016, and the Government's reply, received on 15 February 2017.

*Article 1 of the Convention. Scope of application of the Convention.* In its previous comments, the Committee noted the Government's indication that the Public Contracts Code was undergoing revision. The Government indicates in its report that the current legislation in Cameroon does not provide for any exemptions from the application of the Convention. However, it adds that sections 30 and 31 of the Public Contracts Code provide for exceptions, including for contracts relating to national defence, security and the strategic interests of the State. The Committee recalls that the Convention does not envisage any exception of this nature. ***The Committee trusts that the process of the revision of the Public Contracts Code will be completed rapidly. It requests the Government to provide the Office with a copy of the Public Contracts Code once it has been adopted.***

*Article 2. Inclusion of labour clauses in public contracts.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure the inclusion in all public contracts to which the Convention is applicable of labour clauses in accordance with *Article 2* of the Convention and for the enforcement of such clauses in the manner prescribed by *Articles 4 and 5* of the Convention. In this context, the Committee notes the observations of the UGTC indicating that no measures have been taken to ensure the inclusion of labour clauses in all public contracts to which the Convention is applicable. In its reply to these observations, the Government indicates that it is aware of the existence of these shortcomings in public contracts. However, it adds that certain measures have been taken for the introduction of provisions respecting the protection of workers. With reference to its previous comments, the Committee once again recalls its General Survey of 2008 on labour clauses in public contracts, paragraph 45, in which it considered that the mere fact that the general labour legislation is applicable to all workers does not release States that have ratified the Convention from their obligation to take the necessary measures to ensure that public contracts, whether for construction works, the manufacture of goods or the supply of services, include the labour clauses provided for in *Article 2(1)* of the Convention. This is because the general labour legislation only establishes minimum standards, which are often improved by means of collective bargaining or arbitration awards. If this is the case, under the Convention, the

workers concerned must enjoy working conditions which are at least aligned with the most advantageous conditions set through collect agreement or arbitral award. The terms of the labour clauses must be determined after consultation with the employers' and workers' organizations concerned (*Article 2(3)*), must be brought to the knowledge of tenderers in advance of the selection process (*Article 2(4)*) and notices informing workers of their conditions of work must be posted at the workplace (*Article 4(a)(iii)*). **The Committee once again requests the Government to take the necessary measures (legislative, administrative or others) for the inclusion in all public contracts to which the Convention is applicable of labour clauses consistent with the requirements of Article 2 of the Convention and for the enforcement of such clauses in the manner prescribed by Articles 4 and 5 of the Convention.**

## Central African Republic

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1964)

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* In its previous comment, the Committee noted the adoption of Act No. 08.017 of 6 June 2008 issuing the Public Procurement Code and Decree No. 08.335 of 20 September 2008 on the organization and operation of the authority to regulate public procurement. The Committee notes that, in accordance with section 63 of Act No. 08.017, if a single evaluation criteria has to be taken into account by the contracting authority in light of the objective of the contract, it has to be the price. In this context, no reference is made to the conditions of work in the evaluation criteria. It also noted that this Act, which is aimed at ensuring free access to public procurement orders, the equality of treatment of tenderers, the economy and effectiveness of the procurement procedure and the transparency of procedures on the basis of their rationalization, modernization and traceability, does not contain any provisions on labour clauses which are to be included in public contracts, in accordance with *Article 2* of the Convention. The Government indicates in its report that the terms of the labour clauses to be included in public contracts have not been determined. However, it adds that the conditions of work, hours of work, remuneration rates and registration of employees with the social security fund are still monitored by the regional labour inspection services. The Committee once again draws the Government's attention to the fact that, in its General Survey of 2008 on labour clauses in public contracts, in paragraphs in 40–46 and 176, it emphasized that the essential purpose of the Convention is to ensure that the workers employed by a contractor and paid indirectly out of public funds, through the inclusion of appropriate labour clauses in public contracts, enjoy wages and conditions of work which are at least as satisfactory as the wages and conditions of work normally established for the type of work concerned, whether they are established by collective agreement or otherwise. In its previous comments, the Committee indicated that the Convention has a very simple structure, with all its provisions being articulated around and directly linked to the core requirements set out in *Article 2(1)* of the Convention, namely the requirement to adopt measures to ensure the inclusion of labour clauses guaranteeing to the workers concerned the most advantageous wages and other conditions of work established locally. **While noting that Act No. 08.017 contains specifications to determine the conditions under which the contract is implemented and which include general administrative clauses, as well as specific administrative clauses, the Committee once again requests the Government to adopt without further ado all the appropriate measures to ensure that provisions giving full effect to Article 2 of the Convention are included in the general administrative clauses set out in the specifications. The Committee hopes that, when issuing implementing decrees under the Public Procurement Code, the Government will not fail to take the opportunity to bring the legislation finally into conformity with the Convention, and once again requests the Government to provide a copy of any further texts once they have been adopted. It reminds the Government that it may have recourse to ILO technical assistance if it so wishes.**

## Costa Rica

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1960)

*Articles 2 and 5 of the Convention. Inclusion of labour clauses in public contracts. Supervisory measures and sanctions.* In its previous comments, the Committee requested the Government to provide information on the results of its review of the national legislation on public procurement to assess the need for measures to ensure the effective inclusion of labour clauses in all public contracts. The Committee notes with *interest* the steps taken by the Government to give effect to these provisions of the Convention. The "Guide to Social Criteria in Procurement Processes in Costa Rica" prepared by the Ministry of Labour and Social Security (MTSS) and the Ministry of Finance was published in 2014 as part of the Capacity-Building for Sustainable Public Procurement Programme promoted by the United Nations Environment Programme. This guide establishes the obligation to include labour clauses in all public contracts, including subcontracts, ensuring to the workers' wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned. It also establishes sanctions for non-observance of labour clauses by the contractor or his or her staff, which range from fines to termination of the contract. Moreover, the Government refers in its report to the assistance provided by the ILO Office for Central America, Haiti, Panama and the Dominican Republic in relation to the harmonization of the national legislation with the provisions

of the Convention. In this context, the national policy on sustainable public procurement was approved and the National Steering Committee on Sustainable Procurement was established to oversee its coordination and implementation, by virtue of Executive Decree No. 39310-MH-MINAE-MEIC-MTSS of 21 July 2015. Section 4 of the national policy establishes the criteria that the public sector must take into consideration when procuring goods, services and work, which include observance of the labour and social security legislation and guarantees that protect the workers involved in every stage of the development of the products purchased or services contracted by the administration. Section 5(6) provides that this national policy will be based on the promotion of procurement processes for goods, work and services that foster a culture of compliance with labour legislation so as to ensure adequate conditions and workers' labour rights. ***The Committee requests the Government to provide examples of public contracts containing the labour clauses prescribed in the "Guide to Social Criteria in Procurement Processes in Costa Rica". The Committee also requests the Government to provide updated information on the application in practice of the Convention, including summaries of inspection reports, as well as information on the number and nature of infringements reported.***

## Democratic Republic of the Congo

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1960)***

The Committee notes with ***regret*** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011.

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the adoption of Act No. 10/010 of 27 April 2010 respecting public contracts. However, it notes that this new Act, which is intended to adapt the system of the conclusion of contracts to the requirements of transparency, rationality and effectiveness which currently characterize this vital sector, does not contain any provision on the labour clauses which have to be inserted in public contracts, in accordance with this Article of the Convention. In this respect, the Committee considers it necessary to refer to its 2008 General Survey, which recalls that the essential purpose of the Convention is to ensure that, through the insertion of appropriate labour clauses in public contracts, the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise. ***While noting that section 49 of Act No. 10/010 provides for the establishment of specifications determining the conditions for the execution of the contracts, which will include general administrative clauses as well as specific administrative clauses, the Committee asks the Government to take all the appropriate measures for the inclusion of provisions giving full effect to Article 2 of the Convention in the general administrative clauses contained in the specifications. The Committee hopes that, when adopting the decrees to apply the Act to public contracts, the Government will not fail to take the opportunity to bring its legislation finally into conformity with the Convention and it requests the Government to provide a copy of any new text once it has been adopted.***

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

## Djibouti

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1978)***

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* In its previous comment, the Committee asked the Government to take prompt steps to ensure the effective implementation of the Convention. The Committee notes once again that clause 9.1 of the General Administrative Terms and Conditions applicable to public procurement, adopted by Decree No. 2010-0084/PRE of 8 May 2010, and the exclusion provided for in section 13.1.1 of the Public Procurement Code are insufficient to give effect to the key requirements of the Convention. *Article 2* of the Convention provides for the inclusion of labour clauses in all public contracts covered by the scope of *Article 1* – drawn up after consultation of the employers' and workers' organizations – ensuring to the workers concerned conditions of remuneration and other conditions of labour which are not less favourable than those established by national laws or regulations, collective agreements or arbitration awards for work of the same character in the same sector. In its 2008 General Survey concerning labour clauses in public contracts, paragraph 45, the Committee observed that the essential purpose of the Convention is to ensure that workers employed under public contracts shall enjoy the same conditions as workers whose conditions of employment are fixed not only by national legislation but also by collective agreements or arbitration awards, and that in many cases the provisions of the national legislation respecting wages, hours of work and other conditions of employment provide merely for minimum standards which may be exceeded by collective agreements. The Committee therefore feels that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in *Article 2* of the Convention. The Committee therefore considers that the mere fact that the legislation applies to all workers does not release the government concerned from its obligation to include labour clauses in all public contracts, in accordance with *Article 2(1)* and *(2)* of the Convention. In this context, the Committee notes that the Government has not yet taken steps to give effect to the provisions of the Convention. It also notes the request made by the Government in its report for technical assistance to ensure the effective application of the Convention. The Committee recalls once again that the Convention does not necessarily require the adoption of new

legislation but may be applied by means of administrative instructions or circulars. *The Committee expresses the hope that technical assistance from the Office will be available in the near future and requests the Government to provide information on all measures taken or contemplated to ensure the effective application of the Convention.*

## Dominica

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1983)

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2007. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 6 of the Convention. Legislation giving effect to the Convention.* The Committee notes that the Government has never supplied any information of a practical nature concerning the application of the Convention. *It would therefore be grateful if the Government would collect and transmit together with its next report up-to-date information on the average number of public contracts granted annually and the approximate number of workers engaged in their execution, extracts from inspection reports showing cases where payments have been retained, contracts have been cancelled or contractors have been excluded from public tendering for breach of the Fair Wages Rules, as well as any other particulars which would enable the Committee to have a clear understanding of the manner in which the Convention is applied in practice.*

Moreover, the Committee understands that the Government has entered into a World Bank-financed technical assistance project for growth and social protection with a view to improving, among other things, the transparent operation and the efficient management of public procurement. *In this connection, the Committee would appreciate receiving additional information on the implementation of this project and the results obtained, in particular as regards any amendments introduced or envisaged to public procurement laws and regulations which might affect the application of the Convention.*

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

## Egypt

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1960)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* In its previous comments, the Committee requested the Government to make every effort to take all appropriate measures to ensure the effective application of the Convention in practice. It also expressed the hope that the Ministry of Manpower and Migration would provide the necessary instructions so that the two new bidding terms set out in General Circular No. 8 of 2008 could be incorporated as standard clauses into all future public procurement contracts (whether for construction works, supply of goods or performance of services) concluded between public authorities and private contractors. The Committee notes the Government's indication that, in 2015, the Ministry of Manpower and Migration promulgated Decision No. 329 which issued the Financial and Administrative Regulation for the employment and welfare of informal workers, including those employed in construction work and similar workers. The Government indicates that all government entities, as well as public and private bodies, are required to comply with the provisions of the Regulation, including by adopting all measures necessary to protect and ensure the welfare of such workers, especially with respect to wages, health care and a safe working environment. *The Committee requests the Government to provide a copy of the Financial and Administrative Regulation issued by Decision No. 329 of 2015, and to indicate the manner in which this Regulation is applied. The Committee further requests the Government to continue to provide updated information on measures taken and envisaged to ensure the effective application of the Convention.*

## France

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1951)

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* In its previous comment, the Committee requested the Government to keep the Office informed of any developments, particularly in terms of legislation, with regard to the application of the Convention at the national level. The Committee notes that the Government has adopted several legislative texts to transpose European Directives on public procurement (European Directives 2014/24/EU and 2014/25/EU) and concession contracts (European Directive 2014/23/EU). The Government indicates in its report that Ordinances Nos 2015-899 of 23 July 2015 on public procurement and 2016-65 of 29 January 2016 on concession contracts, and their implementing decrees, constitute progress towards compliance with labour standards by holders of public contracts and their subcontractors. The Government adds, however, that these new provisions are not sufficient to give full effect to the obligations of the Convention, for the same reasons as those indicated in its previous reports. It points out that it is impossible to amend these rules to bring them into conformity with the obligations of the Convention, unless measures are adopted that are contrary to the law of the European Union. For

example, the new legislative texts did not reintroduce measures that would require the formal insertion of labour clauses in public contracts. The Government specifies, however, that French domestic positive law provides for similar obligations offering sufficient protection which is comparable to that established by the Convention. In its General Survey of 2008 concerning labour clauses (public contracts), paragraph 40, the Committee recalled that the essential purpose of the Convention and its Recommendation is to ensure that the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts. This has the effect of setting as minimum conditions for the contract standards that are already established within the locality. Labour costs are thus removed from competition between bidders. The further aim is that local standards higher than those of general application should be applied, where they exist. In its previous comment, the Committee emphasized that *Article 2(1)(a)* of the Convention refers to all the collective agreements concluded between employers' and workers' organizations representing a substantial proportion of employers and workers in the trade or industry concerned, and not only collective agreements that have been extended. The Government indicates in this regard that the compliance with collective agreements that have not been extended cannot be imposed on all public contract holders and subcontractors. Only the implementation of collective agreements declared to be of general application, following the adoption of an extension order, can be required of subcontractors that are not domiciled in France. Furthermore, the Government recalls that the Court of Justice of the European Union has found that national legislation cannot require public procurement contractors and their subcontractors to respect the provisions of collective agreements when they have not been declared of general application. The Committee once again recalls that the fundamental requirement of *Article 2* of the Convention is that public contracts to which the Convention applies must include clauses ensuring to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried out. The Convention provides that these clauses may be established by collective agreement, arbitration award or national legislation. Article 18(2) of Directive 2014/24/EU provides, with regard to the principles of procurement, that "Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X". The Committee observes that the eight fundamental ILO Conventions are listed in the Annex. In box 5 of its 2008 General Survey, the Committee emphasized that the ILO Declaration of 1998 on Fundamental Principles and Rights at Work and the Convention proceed along parallel lines and emphasized the complementarity of the two sets of principles and the importance of the Convention as a possible mechanism for promoting core labour standards. Furthermore, the Committee observes that the Court of Justice of the European Union found in 2015 that the European Directives do not prevent the exclusion from public procurement of bidders who do not undertake to pay minimum wages to the workers concerned. Moreover, the Committee observes that, as noted by the European Committee of the Regions in Opinion No. 2016/C 051/04 on standards of remuneration in employment in the European Union, an interpretation of legislative texts transposing European Directives allowing for the unequal treatment of bidders could lead to social dumping. ***The Committee once again requests the Government to continue providing more detailed information on any legislative changes that could have an impact and the application in practice of the Convention at the national level. It also requests the Government to provide a copy of any court decision or official publication involving questions of principle related to the application of the Convention.***

## Ghana

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1961)**

*Articles 1 and 2 of the Convention. Scope and purpose of the Convention.* The Committee notes the Government's reference in its report to the adoption of the Public Procurement (Amendment) Act, 2016 (Act 914) (hereinafter the 2016 PPA), amending Part Two of the Public Procurement Act, 2003 (Act 663) on procurement structures. The Committee notes that the amendments added the requirement that procurement shall use the appropriate standard tender documents stipulated in the Sixth Schedule, with the minimum changes acceptable to the Procurement Board (section 50(1) of the 2016 PPA). There is no mention of the labour clauses required under the Convention, nor does section 59 on the evaluation of tenders contain any such reference. Recalling paragraphs 98 and 99 of its 2008 General Survey on labour clauses in public contracts, the Committee observes that these general references do not meet the core requirement of the Convention under *Article 2*, which calls for the mandatory insertion of appropriate labour clauses in the public contracts covered by the Convention. Finally, the Committee notes that, according to section 15(1) of the 2016 PPA, the minister responsible for finance may declare an entity, a subsidiary, an agency or a natural person to be a procurement entity, if the public procurement procedures are deemed unsuitable due to the strategic nature of the procurement. The Committee further notes that such entity is legally and financially autonomous and operates under commercial law (section 15(2)(a) of the 2016 PPA) at the ministerial, departmental, agency, metropolitan, municipal or district levels (section 19(1) of the 2016 PPA). ***The Committee therefore once again requests the Government to take all***

*necessary measures to bring its national legislation into conformity with the Convention, and encourages it to avail itself of the technical assistance from the Office, if it so wishes. It is also requested to provide information on the terms of the clauses to be included in the standard tender documents as referred to in section 50 and the Sixth Schedule of the 2016 PPA. The Committee requests the Government to indicate the measures adopted to ensure that bidders in a public procurement process are made aware of the terms of the clauses required. It further requests the Government to provide information on the nature and outcome of consultations held with the social partners prior to amending the Public Procurement Act of 2003.*

*Application in practice. The Committee requests the Government to provide information on the manner in which the Convention is applied in the country including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.*

## Guinea

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1966)

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* The Committee notes the Government's report and the three texts implementing the Labour Code of 2014 sent by the Government, regulating the use of foreign labour, determining protected jobs in the private and related sectors, and setting fees for work permits in the Republic of Guinea. The Government indicates that other texts have been drawn up and will be submitted to the next session of the Labour and Social Legislation Advisory Committee. The Committee notes once again that the Government's report does not contain any reply to its previous comments, only providing information that the Committee considers unrelated to the content of the Convention and the issue of its scope. It recalls that in ratifying this Convention the State undertakes, among other things, to guarantee that contracts awarded by a public authority involving the employment of workers by the other party to the contract shall include clauses ensuring to the workers concerned conditions of work which are not less favourable than those established for work of the same character in the trade or industry concerned in the same region. The Committee is once again bound to conclude that for the last 40 years no tangible progress has been made in applying the provisions of the Convention either in law or in practice. *The Committee therefore expects that the Government will make a sincere effort to maintain a meaningful dialogue with the ILO supervisory bodies and once more urges the Government to take all necessary steps without further delay to bring its national law and practice into conformity with the specific terms and objectives of the Convention.*

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

## Iraq

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1986)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* In response to the Committee's previous observation, the Government indicates only that the Ministry of Planning, as the competent authority, has been approached with regard to the insertion of labour clauses in all public contracts. The Committee recalls that, for some years, it has continued to draw the Government's attention to the core requirement of the Convention, namely that a labour clause within the meaning of *Article 2* of the Convention, be incorporated into every public contract, whether for works, supply of goods or performance of services (*Article 1*). The Committee once again refers the Government to paragraphs 98–121 of the 2008 General Survey on labour clauses in public contracts, which contain detailed explanations on the exact nature and content of this principal obligation. The Committee notes the Government's indication that the Tripartite Consultative Committee established to study amendments to the labour legislation is still in operation and continues to report on ILO Conventions and Recommendations. In this regard, the Government indicates that the Labour Code (Act No. 357 of 2015) was referred to the Tripartite Consultative Committee in order to bring the Code into conformity with international labour Conventions prior to its promulgation. *The Committee once again requests the Government to provide information on progress made in adopting legislative or administrative measures to give effect to the Convention. In particular, it urges the Government to take the necessary measures without delay to bring the national legislation into conformity with Article 2 of the Convention and to communicate a copy of the revised Labour Code as soon as it is adopted.*

## Jamaica

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1962)

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014.

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes that despite the detailed explanations provided in previous comments regarding the scope and purpose of the Convention as well as the steps required for its practical implementation, the Government continues to refer to legislative texts that bear little relevance with the Convention as they do not provide for labour clauses of the type prescribed in *Article 2* of the Convention. More concretely, the Committee notes the Government's reference to the Factories Act and the Minimum Wages Act as instruments protecting all workers without exception, and also to the Labour and Management Agreement (LMA) 2011–13 for the building and construction industry. In particular, the Committee notes that the LMA provides for a pay scale which is higher than the minimum wage rate which was last revised in September 2012 and is now set at 5,000 Jamaican dollars (JMD) (approximately US\$48) per 40-hour working week.

The Committee recalls, in this connection, that the Convention requires that public contracts (whether for construction works, manufacture of goods or supply of services) should include clauses ensuring to the workers concerned wages, hours of work and other labour conditions not less favourable than those locally established for work of the same character through collective agreement, arbitration award or national laws or regulations. In the case of a construction contract, for instance, this requirement would practically mean that the selected contractor and any subcontractors would be obliged to pay wages at least at the LMA rate – and not the national minimum wage – provided that the LMA contains the most favourable pay conditions for construction workers. It is precisely because employment and working conditions set out in general labour legislation are often improved through collective bargaining that the Committee has consistently taken the view that the mere fact of the national legislation being applicable to all workers does not release the government concerned from its obligation to provide for the insertion of labour clauses in all public contracts in accordance with *Article 2(1)* and *(2)*, of the Convention. **Recalling that the Convention does not necessarily require the adoption of new legislation but may also be applied through administrative instructions or circulars, the Committee expresses once again the hope that the Government will take prompt action to ensure the effective implementation of the Convention both in law and in practice.**

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

## Mauritius

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1969)**

*Article 1(3) of the Convention. Scope of application. Subcontractors.* In its previous comments, the Committee noted the Government's indications that, while there was initially a consensus on extending the provisions of section 46(5) of the Public Procurement Act, 2006, concerning the insertion of labour clauses to subcontractors and assignees, it was ultimately left to the main contractor to ensure compliance and to submit evidence of compliance to the public procurement authority. The Committee noted that section 46(8) of the 2006 Act does not place any responsibility on the main contractor to ensure compliance on the part of a subcontractor or to produce evidence of such compliance. The Committee once again draws the Government's attention to the 2008 General Survey on labour clauses in public contracts, paragraphs 75–81, which provide guidance in this area. In particular, paragraph 75 points out that *Article 1(3)* of the Convention requires the competent authorities to take appropriate measures to ensure that labour clauses of the type required by the Convention are applied to work carried out by subcontractors or assignees of contracts. **In light of the foregoing, the Committee once again requests the Government to take, without further delay, all necessary measures to ensure that labour clauses in public contracts apply fully to the work carried out by subcontractors and assignees, as required by Article 1(3) of the Convention, and to provide information on the progress achieved in this regard.**

*Article 2. Insertion of labour clauses.* In its previous comments, the Committee requested the Government to clarify the reasons why the standard bidding documents for procurement of goods do not contain labour clauses of the type required by the Convention, while these clauses are contained in other standard bidding documents. The Committee notes the Government's indication that the standard bidding documents for the procurement of goods is based on World Bank guidelines which do not contain the labour clauses required. **The Committee wishes to draw the attention of the Government to its obligations under Article 2 and urges the Government to take measures to ensure full implementation with the requirements of the Convention.**

*Article 5(1). Adequate sanctions.* **The Committee requests the Government to indicate the measures taken or contemplated to ensure the application of adequate penalties for failure to respect the labour clauses contained in public contracts, as required under Article 5(1) of the Convention.**

*Application of the Convention in practice.* The Committee notes the Government's indication that the current system is not structured to capture up-to-date information on the practical application of the Convention, including statistics on the number and types of public contracts and activity reports of the Central Procurement Board or the Procurement Policy Office on the implementation of the public procurement legislation. **The Committee hopes that the Government will make every effort to collect and provide up-to-date information, including statistical information, enabling a general appreciation of the manner in which the Convention is implemented in practice.**

## Netherlands

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1952)

The Committee notes the observations of the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions and the Trade Union Federation for Professionals (VCP), received on 31 August 2017. **The Committee requests the Government to provide its comments in this respect.**

*Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts.* In its previous comments, the Committee requested the Government to provide additional explanations with regard to the nature, scope and content of the Code for responsible market behaviour in the cleaning industry and its possible impact on the practical application of the Convention. The Government indicates that the pilot version of the Code from 2011 was applied only in the cleaning sector, but that the Code is now more widely applied beyond the cleaning industry, and is now also used for movers, as well as in the security and contract catering sectors. The Government also indicates that, by signing the Code, the parties (commissioning parties, contractors, trade unions and intermediaries) undertake to apply a set of principles regarding working conditions, including the correct payment of wages. The Government adds that the Code assists the parties to describe, accept and carry out assignments in a socially responsible manner, with respect for the quality of the services being provided. To monitor the implementation of the Code, each sector has a specific committee, composed of the social partners and contractors for each sector, which is authorized to examine complaints alleging inefficient or inadequate application of the Code. After hearing both parties, the committee decides whether a sanction should be imposed for non-compliance. In this respect, the Committee notes the observations of the workers' organizations, in which they point out that the Code is a private initiative which does not contain any legally binding provisions implementing the requirements of the Convention. The Committee notes that, in accordance with *Article 1(1)(c)*, the Convention applies not merely to a specific sector, but to all public contracts, whether for works (construction, alteration, repair or demolition of public works); goods (the manufacture, assembly, handling or shipment of materials, supplies or equipment); or services (the performance or supply of services). The Government reports that, to improve social conditions for workers, it has put in place a so-called "chain of liability for wages", which makes all legal entities in the chain (the main clients, contractors, subcontractors and employers) jointly responsible for payment of wages of the workers hired under the contract. If the workers do not get paid or are underpaid, they can hold each link in the chain liable for payment of their wages. The workers' organizations note in their observations that the "chain of liability" procedure is too unwieldy because each link has to be addressed separately and each claim must be fully examined before the employee can move up to the next link in the chain. The workers' organizations underline that this requirement makes the process too long, especially for foreign workers that often leave the country before even the first link in the chain is fully addressed. In their observations, the workers' organizations once again express concern regarding the non-application of the Convention, indicating that the Public Procurement Act, which entered into force on 1 April 2013 and provides a general legal framework for public procurement regulations, implements the public procurement European Directives without ensuring the application of the Convention. In this regard, they note that section 2.115, paragraph 1, of the Public Procurement Act essentially reproduces section 26 of the Order of July 2005 on procedures for the award of public works, supply and service contracts implementing the EU Public Procurement Directive of 2004 and does not ensure the application of *Article 2* of the Convention. The workers' organizations point out that section 2.115, paragraph 1 of the Act is drafted as a purely permissive provision, as it authorizes the contracting authority to require the contractor to observe certain social, environmental and/or innovation criteria, but does not require the contracting authority to require the contractor to adhere to such criteria. As the Committee has noted in previous comments, the core requirement of the Convention concerns the inclusion of labour clauses of the type provided for in *Article 2*. **The Committee therefore requests the Government to provide information on progress made in ensuring effective application of the core requirements of the Convention. The Committee also requests the Government to provide updated information on the Code and its impact, and on the number and type of sanctions imposed by the sectoral committees in cases of non-compliance.**

## Norway

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1996)

The Committee notes the observations of the Norwegian Confederation of Trade Unions (LO), received together with the Government's report. **The Government is requested to provide its comments in this respect.**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee refers to its previous comments, in which it requested the Government to keep the Office informed of any new developments in the procedure initiated by the Surveillance Authority of the European Free Trade Association (EFTA) against Norway with regard to Regulation No. 112/2008 of 8 February 2008, as amended, and to provide information on the manner in which the Regulation gives effect to the Convention. The Committee notes the Government's indication that the EFTA Surveillance Authority decided to close the case in December 2012, stating that "taking into consideration the development of this case since its opening in June 2008, in particular the amendments adopted to Regulation No. 112/2008, together with the

increase in the number of universally applicable agreements, the scope of the infringement has been significantly reduced. The Authority considers it therefore appropriate, at the present stage, not to proceed further with this case. This decision is, however, without prejudice to any future decision by the Authority to open a new case on this issue or on a related issue. Such a decision could be taken, for example, in the light of new information concerning the implementation, interpretation or application of the national measures under consideration, receipt of a new complaint, or developments in EEA or EU law.” The Government indicates that, while there have been no amendments in the Regulation itself during the reporting period, due to the revision of the public procurement legislation to implement EU Directive 2014/23 of 26 February 2014 on the award of concession contracts, the Regulation’s scope of application has been extended to cover such contracts as of 1 January 2017. Moreover, the Government adopted new legislation which as of 1 January 2014 gives the Labour Inspection Authority competence to supervise and enforce the contracting authority’s compliance with the Regulation. The Government adds that a recent evaluation of the Regulation showed that, while most contracting authorities include labour clauses in their contracts, many, particularly smaller municipalities, fail to follow up on compliance with the clauses once they have been inserted into the contracts. In its observations, the LO expresses concern that the threshold for application of the Regulation is very high, and urges application of the Convention to public procurement contracts under this threshold, and that it be applied in all sectors to prevent social dumping. The LO also states that the Government has not increased the Labour Inspection Authority resources and asks that it do so to strengthen compliance. ***The Committee requests the Government to provide updated detailed information on the manner in which Regulation No. 112/2008 is applied in practice, and to communicate a summary of the evaluation concerning the Regulation.***

## Panama

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1971)***

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* In its previous comments, the Committee noted that it has been drawing the Government’s attention for a number of years to the need to take appropriate action to bring effect to the core requirement of the Convention concerning the insertion of the labour clauses in public contracts called for by *Article 2* of the Convention. Acknowledging that its national procurement legislation is not in conformity with the Convention, the Government indicated its intention to rectify the situation. The Committee expressed the hope that the Government would therefore take all appropriate measures very shortly to bring its national legislation into conformity with the Convention. The Committee notes, however, that while the Government once again acknowledges that its public procurement legislation is not in conformity with the provisions of the Convention, the situation remains unchanged. It further notes the Government’s indication that, through the Ministry of Work and Labour Development (MITRADEL), it has held two meetings with the Directorate-General of Public Procurement (DGCP) to discuss the measures to be taken to ensure the effective implementation of the Convention. The Committee notes that the DGCP, in a communication of 28 June 2017 to MITRADEL (DGCP-SG-031-2017) submitted together with the Government’s report, points out that a pending Bill to reform the national public procurement legislation (Bill No. 305) does not include any provisions implementing the labour clauses of the Convention. The DGCP indicates that it is nevertheless working on a draft Standardization of Public Procurement Documents, and proposes to collaborate with MITRADEL to draft provisions that could be added to the model contract forms used by all public entities, which would be aligned with the requirements of *Article 2*. The DGCP refers to its prior communication of 28 January 2013 (DGCP-DG-DJ018-2013), in which it requested MITRADEL to provide it with guidelines regarding the labour-related elements that it should include in the bidding documents. The Committee further notes that the Government requested the technical assistance of the Office by letter dated 2 August 2017. ***The Committee hopes that the Office will soon be able to provide the technical assistance requested. It urges the Government to take all appropriate measures without further delay in order to bring its legislation into full conformity with the requirements of the Convention and requests that it provide updated information on progress achieved in this respect.***

## Philippines

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1953)***

*Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts. Application of the Convention in practice.* In its previous comments, the Committee, noting the Government’s reference to Department Order No. 18-A of 14 November 2011 of the Department of Labor and Employment (DOLE), observed that the fact that general labour legislation is applicable to workers engaged in the execution of public contracts does not in any way exempt the Government from providing for the inclusion in public contracts of the labour clauses required by the Convention. The Committee requested the Government to formulate either legislative provisions or administrative instructions and circulars which would fully incorporate the provisions of the Convention into the domestic public procurement regulatory framework. The Committee notes with ***interest*** that, on 20 March 2015, the Government Procurement Policy Board

(GPPB) undertook to incorporate relevant provisions of the Convention into the Philippine Bidding Documents (PBDs) for the Procurement of Goods, Infrastructure Projects and Consulting Services. Subsequently, pursuant to section 75 of Republic Act No. 9184/2003, the Government promulgated Revised Implementing Rules and Regulations of the Republic Act (IRR), otherwise known as the “Government Procurement Reform Act”, for the stated purpose of prescribing the necessary rules and regulations for the modernization, standardization and regulation of the Government’s procurement activities. The revised IRR came into force on 28 October 2016. The Government adds that, pursuant to section 37.2.3(b) of the IRR, bidding documents shall form part of the contract. At the same time, through Resolution No. 24 of 27 October 2016, the Government approved the incorporation of provisions relevant to the Convention in the three volumes of the Fifth Edition of the PBDs for the Procurement of Goods, Infrastructure Projects and Consulting Services, respectively. The Government indicates that section 6.2(j) of the PBD for the Procurement of Goods and the PBD for the Procurement of Infrastructure Projects, and section 4.2(j) of the PBD for the Procurement of Consulting Services establish the responsibilities of the bidder or consultant, respectively. In this context, the Committee notes that section 6.2(j)(i)–(iii) of the PBDs for Procurement of Goods and Infrastructure Projects and 4.2(j)(i)–(iii) of the PBD for Procurement of Consulting Services, respectively, call for the bidder or consultant to ensure the entitlement of workers to wages, hours of work, safety and health and other prevailing conditions of work as established by national laws, rules and regulations, or by collective bargaining agreement or arbitration award, if and when applicable. In addition, in the event of underpayment or non-payment of workers’ wages and wage-related benefits, the bidder agrees that the performance security or portion of the contract amount shall be withheld in favour of the complaining workers without prejudice to the institution of appropriate actions under the Labour Code, as amended, and other social legislation. The parties also agree to comply with occupational safety and health standards and to correct deficiencies, if any, and to inform the workers of their conditions of work and labour clauses under the contract specifying wages, hours of work and other benefits, through posting this information in two conspicuous places in the establishment’s premises. The Committee notes that these provisions in the PBDs refer to “other prevailing conditions of work”, rather than to “conditions not less favourable” as envisaged under *Article 2* of the Convention. In its 2008 General Survey on labour clauses in public contracts, paragraphs 103 and 104, the Committee indicates that “it may appear from the language of Article 2 of the Convention that conditions to be ensured by labour clauses in public contracts need not be the most favourable conditions among those fixed by collective agreements, arbitration awards, or national law. This is not the case in practice.” Given the requirement in the Convention that workers enjoy conditions “not less favourable” than those established by collective agreement, arbitration awards or national legislation, the automatic result would be to require the best conditions out of these three possibilities under *Article 2(1)(a)–(c)* of the Convention. ***The Committee therefore requests the Government to take all necessary measures to ensure that the workers concerned enjoy wages (including allowances), hours of work and other conditions of labour that are not less favourable than those established for work of the same character in the trade or industry in the district where the work is carried out. It also requests the Government to indicate the manner in which it is ensured that the Convention is applied to work carried out by subcontractors or assignees, as required under Article 1(3) of the Convention. In addition, the Committee requests that the Government provide updated information on the application in practice of the 2016 Revised Implementing Rules and Regulations, including sample copies of public contracts, statistics on the number and type of contracts awarded by a government authority, as well as inspection results showing the number of contraventions observed and sanctions imposed.***

*Article 5. Adequate sanctions.* The Committee notes that section 6.2(j)(ii) of the PBDs for the Procurement of Goods and Infrastructure Projects and section 4.2(j)(ii) of the PBD for the Procurement of Consulting Services, respectively, provide that in the event of underpayment or non-payment of workers’ wages and wage-related benefits, the bidder agrees that the performance security or portion of the contract amount shall be withheld in favour of the complaining workers without prejudice to the institution of appropriate actions under the Labour Code, as amended, and other social legislation. While the PBDs provide for the recovery of unpaid wages owed to the workers concerned, as required under *Article 5(2)* of the Convention, it does not specify sanctions, such as the withholding of contracts, for failure to observe and apply labour clauses, as called for under *Article 5(1)*. ***The Committee requests the Government to indicate the manner in which effect is given in practice to Article 5(1) of the Convention.***

## Rwanda

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1962)***

The Committee notes that the Government’s report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

*Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee has been commenting for over 30 years on the Government’s failure to enact legislation or adopt other measures with a view to implementing the basic requirements of the Convention. In its last report, the Government refers to Ministerial Order No. 5 of 13 July 2010 concerning written contracts of employment, which, however, bears little relevance to public contracts within the meaning of *Article 1(1)* of the Convention or to the labour clauses that public contracts should include as required under *Article 2(1)* of the Convention. The Committee once again recalls that the fact that the general labour legislation applies to workers engaged in the execution of public contracts, as provided for in section 96 of the Public Procurement Act of 2007, does not in itself give effect to *Article 2* of the Convention which requires the insertion, in all public contracts to which the Convention

applies, of labour clauses ensuring that the workers concerned benefit from wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations.

As the Committee has pointed out on a number of occasions, the legislation to which the Government refers in most cases lays down minimum standards, for instance as regards wage levels, and does not necessarily reflect the actual working conditions of workers. Thus, if the legislation lays down a minimum wage but workers in a particular profession are actually receiving higher wages, the Convention would require that any workers engaged in the execution of a public contract – in the same area and for work of the same character – be entitled to receive the prevailing wage rather than the minimum wage prescribed in the legislation.

In other terms, the application of the general labour legislation is not sufficient to ensure the application of the Convention, in as much as the minimum standards fixed by law are often improved upon by means of collective agreement or otherwise. *The Committee therefore asks the Government once more to take steps without further delay in order to bring the national legislation into conformity with the provisions of the Convention, especially as regards: the determination of the terms of the labour clauses to be included in contracts after consultation with organizations of employers and workers concerned (Article 2(3)); the dissemination of those clauses, by advertising specifications or otherwise, so that tenderers are aware of the terms of the clauses (Article 2(4)); the posting of notices in conspicuous places to ensure that workers are informed of the conditions of work applicable to them (Article 4(a)(iii)); and the system of adequate sanctions, by the withholding of contracts or of payments due, for failure to apply the provisions of labour clauses (Article 5). Moreover, noting that under the Public Procurement Act of 2007, the Rwanda Public Procurement Authority (RPPA) is responsible for regulating and monitoring all public procurement operations, the Committee requests the Government to provide detailed information on any measures taken or planned by the RPPA with a view to ensuring fair labour conditions for those engaged in the execution of public contracts.*

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

## Spain

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1971)

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 and 17 August 2017, respectively. The Committee also notes the Government's replies to the previous observations included in its report.

*Article 2 of the Convention. Insertion of labour clauses in public contracts. Legislative developments.* In its previous comments, the Committee noted that Royal Decree No. 3/2011, regarding the consolidated text of the Public Contracts Act, does not contain any provisions expressly requiring the inclusion of labour clauses in public contracts and therefore gives no effect to the Convention. The Committee therefore requested the Government to take the necessary measures to ensure that the Convention is fully implemented in law and in practice. The Committee notes that, in their observations, the workers' organizations refer to the shortcomings in the previous legislation on public contracts in relation with the requirements under the Convention. They highlight aspects including the need to introduce legislative amendments that require the insertion of labour clauses in public contracts. In this respect, the Committee notes the adoption of Act No. 9/2017 (8 November 2017) on public sector contracts, which transposes the 2014 European Union Directive on public procurement into the Spanish legal framework. In its report, the Government indicates in general that the above Act relates to the provisions set out in the Workers Regulations in that the application of the collective agreements of the bidding enterprise prevail over that of the collective agreements governing the occupational groups carrying out the service. The UGT states in its observations that the transposition of the European Union Directive represents significant progress in socially responsible public procurement and that it could also contribute to remedying certain existing shortcomings in the previous legislation regarding public procurement. Lastly, the UGT refers to various provisions which set out limits to collective bargaining on the salaries of workers in the bidding enterprise, such as section 5 of Royal Decree No. 55/2017 (3 February 2017), which provides for the development of Act No. 2/2015 on exemptions from statutory indexation of 30 March, which provides that any revision of the cost of procurement based on an increase in the cost of labour shall be confined to any increase in public sector remuneration. In its reply, the Government indicates that this limit is intended to prevent, as a result of rulings against the administration, workers from bidding enterprises from gaining the status of public workers without going through the relevant selection procedure outside the public sector planning process. *The Committee trusts that the Government is taking measures to ensure that the application of the new Act on public sector contracts is in conformity with the requirements of the Convention. The Committee requests the Government to provide information on the application in practice of the new Act, including extracts of relevant judicial decisions, summaries of inspection reports and information on the number and nature of the violations detected.*

## Suriname

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1976)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous comments regarding the absence of legislation implementing the Convention, the Committee notes the Government's reference to the standards for the procurement of works (AWS, 1996) and the standards for the administrative execution of works (UWS, 1996). The Government reports that, in July 2017, referring to the Committee's comments, the Minister of Labour recommended to the Vice-President of Suriname and the Minister of Public Works, Transport and Communication that an article be included in the UWS and/or the AWS stating that the national labour legislation will be applicable to all public contracts and calling for a clause to be included in all public contracts regarding the applicability of the national labour legislation in the execution of such contracts. Moreover, the Committee notes the Government's statement with regard to the Public Capital Expenditure Management Programme financed by the Inter-American Development Bank that no legislative proposal has yet been submitted to the National Assembly to unify and consolidate in law the principles and key regulations developed in the framework of the Programme. The Committee wishes to draw the Government's attention once again to the main purpose of the Convention, which is to ensure the insertion in public contracts of labour clauses of a very specific content. In its 2008 General Survey on labour clauses in public contracts, paragraph 45, the Committee noted that "... the essential purpose of the Convention is to ensure that workers employed under public contracts shall enjoy the same conditions as other workers whose conditions of employment are fixed not only by national legislation but also by collective agreements or arbitration awards, and that in many cases the provisions in the national legislation respecting wages, hours of work and other conditions of employment provide merely for minimum standards which may be exceeded by collective agreements. The Committee therefore feels that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in Article 2 of the Convention." Through the insertion of appropriate labour clauses in public contracts, workers employed on such contracts enjoy wages and other working conditions that are at least as satisfactory as those normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is being done (2008 General Survey, paragraph 40). The idea behind the Convention is that public authorities contracting for the execution of public works or the supply of goods and services should concern themselves with the working conditions under which these operations are carried out, due to the fact that government contracts are typically awarded to the lowest bidder and contractors may be tempted, in light of the competition involved, to economize on labour costs (2008 General Survey, paragraph 2). In paragraph 308 of its 2008 General Survey, the Committee notes that in the light of the greater impact of globalization on an increasing number of member States and the related heightening of competitive pressures, the objectives of the Convention are even more valid today than they were 60 years ago and strengthen the ILO's call for fair globalization. ***The Committee therefore urges the Government to take steps without delay to bring its law and regulations into full conformity with the Convention. The Committee also requests the Government to provide information on the progress achieved in this regard.***

## United Republic of Tanzania

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1962)

*Articles 1, 2, 4 and 5 of the Convention. Insertion of labour clauses in public contracts. Notice. Sanctions.* In its previous comments, the Committee requested the Government to take the necessary legislative, administrative or other measures to ensure the insertion in all public contracts specified in *Article 1* of the Convention of the labour clauses required under paragraph 1 of *Article 2* of the Convention and for the enforcement of such clauses in the manner prescribed by *Articles 4* and *5* of the Convention. The Government indicates in its report that the Standard Tendering Documents are in effect and available for use by the procuring entities, in the procurement of works through medium and large contracts through national and international competitive tendering procedures. The Committee notes that section 20.1 of the General Conditions of Contract in the Standard Tendering Document for Medium and Large Works provide that a contractor is duty-bound to comply with all the relevant labour laws applicable in the country, including laws relating to workers' employment, working hours, health, safety, welfare and immigration, and shall allow them all their legal rights. Pursuant to section 20.2 of these General Conditions of Contract, the contractor is also required to take all reasonable precautions to maintain the health and safety of personnel. The Committee notes, however, that the Standard Tendering Documents for the procurement of works for medium and large contracts do not refer to or contain any labour clauses to ensure that workers engaged under such contracts enjoy conditions of labour, including wages and hours of work, which are not less favourable than those established for work of the same character in the same district, as required under this provision of the Convention. Similar provisions are included in the General Conditions of Contract for the Standard Tendering Document for the procurement of smaller works (sections 21.1 and 21.2). Moreover, neither the Standard Tendering Documents for the procurement of goods or those for the procurement of consultancy services provide for application for either the general labour law or for the insertion of appropriate labour clauses. The Committee is once

again compelled to draw the Government's attention to its 2008 General Survey on labour clauses in public contracts, paragraph 45, in which the Committee emphasized that the mere fact that contractors under public contracts are required to adhere to general labour legislation does not release the Government from its obligation to draft and include appropriate labour clauses of the type required in *Article 2(1)* of the Convention in public contracts, whether for construction works, manufacture of goods or supply of services. As the Committee pointed out in its previous comments, this is because general labour legislation establishes only minimum standards, which are often improved through collective bargaining or arbitration awards. If this is the case, under the Convention, the workers concerned must enjoy working conditions which are at least aligned to the most advantageous conditions set through collective agreement or arbitral award. Moreover, *Article 2* establishes that the terms of the labour clauses to be included in public contracts must be determined after consultation with the employers' and workers' organizations concerned (*Article 2(3)*) and brought to the knowledge of tenderers in advance of the selection process (*Article 2(4)*). In addition, notices informing the workers of their conditions of work must be posted at the workplace (*Article 4(a)(iii)*). ***The Committee therefore once again requests the Government to take the necessary measures – legislative, administrative or others – for the insertion in all public contracts covered by this Convention of labour clauses that comply with the requirements of Article 2 of the Convention and for the enforcement of such clauses in the manner prescribed by Articles 4 and 5 of the Convention. It also requests the Government to provide information on the manner in which effect is given to the central requirement of the Convention under Article 2. The Committee also requests the Government to indicate the relevant provisions establishing that the obligations under the Convention apply also to subcontractors or assignees, as required under Article 1(3) of the Convention.***

*Articles 4 and 5. Notice of working conditions. Sanctions.* In its previous comments, the Committee requested the Government to take measures to ensure the enforcement of labour clauses in the manner prescribed by *Articles 4* and *5* of the Convention. Moreover, notices informing the workers concerned of their conditions of work must be posted in conspicuous places at the establishments and workplaces concerned (*Article 4(a)(iii)*). ***The Committee requests the Government to indicate the measures taken or envisaged to give effect to Articles 4 and 5 of the Convention.***

## United Kingdom

### Bermuda

#### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)***

*Article 2 of the Convention. Insertion of labour clauses into public contracts.* In its previous comments, the Committee requested the Government to formulate standard binding documents incorporating labour clauses into all public contracts and to provide a copy of the Code of Practice for Project Management and Procurement, which was in preparation under the Good Governance Act 2011. The Committee notes the draft version of the Code of Practice for Project Management and Procurement transmitted by the Government with its report. It observes, however, that the draft Code of Practice does not refer to or contain any labour clauses ensuring that workers engaged under public contracts enjoy conditions of labour, including wages and hours of work, which are not less favourable than those established for work of the same character in the same district, as required under *Article 2(1)* of the Convention. The Committee once again recalls that the principal objective of the Convention is to promote good governance and socially responsible public procurement by requiring contractors to apply locally established prevailing rates of pay and terms and conditions of work as determined by law or collective agreement. The Convention calls for the establishment of a level playing field – in terms of labour standards – for all economic actors, so as to ensure fair competition. Requiring all bidders to respect, as a minimum, certain locally established standards prevents wages, working time and working conditions from being used as elements of competition. Consequently, no downward pressure on wages and working conditions may be exerted. ***The Committee expresses the firm hope that the Government will take steps without delay to formulate standard bidding documents incorporating labour clauses into all public contracts (whether for construction works, goods or services) that are fully aligned with the requirements of Article 2 of the Convention. It requests the Government to keep the Office informed of progress made in this regard and to transmit a copy of the Code of Practice for Project Management and Procurement once it is adopted.***

## Bolivarian Republic of Venezuela

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)**

(ratification: 1944)

### **Protection of Wages Convention, 1949 (No. 95)**

(ratification: 1982)

#### **Follow-up to the decisions of the Government Body (complaints made under article 26 of the Constitution of the ILO)**

The Committee notes that a complaint under article 26 of the ILO Constitution alleging non-observance of Conventions Nos 87, 95 and 111 by the Bolivarian Republic of Venezuela, made by several Workers' delegates to the International Labour Conference in 2016, was found receivable by the Governing Body in November 2016. In March 2017, the Governing Body decided, in relation to Convention No. 95 that, as all aspects of the complaint relating to the Convention had not been examined recently by the Committee of Experts, the corresponding allegations would be transmitted to the Committee of Experts for their full examination.

The Committee also notes that the complaint under article 26 of the Constitution alleging non-compliance with Conventions Nos 26, 87 and 144 by the Bolivarian Republic of Venezuela, made by several Employers' delegates to the International Labour Conference in 2015, of which the Committee took note in its previous comment on Convention No. 26, is still pending before the Governing Body, which last examined it in November 2017.

The Committee also notes the joint observations made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE) in relation to the application of Convention No. 26, received on 31 August 2017, and the Government's reply. Finally, the Committee notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 31 August 2017, and the joint observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), on the application of Conventions Nos 26 and 95, received on 18 September 2017, and the Government's reply. The Committee notes that the observations made by employers' and workers' organizations relate to matters raised in the complaints referred to above.

In view of the links between the subjects addressed within the framework of these procedures in relation to the application of Conventions Nos 26 and 95, the Committee considers it appropriate to examine them in the same comment.

#### **Minimum wage**

*Article 3 of Convention No. 26. Participation of the social partners in minimum wage fixing.* In its previous comment, the Committee once again requested the Government to ensure that full effect is given to *Article 3* of the Convention in relation to the consultation and participation on an equal footing of the most representative organizations of workers and employers in the establishment and operation of the minimum wage system. In this regard, the Committee notes with **concern** that both FEDECAMARAS and the IOE and UNETE, CTV, CGT and CODESA, as well as the CTASI, indicate that the most recent increases in the minimum wage were decided upon unilaterally by the Government. The Committee notes the Government's indication in its report and its replies to these observations that: (i) during the period 2015–17, due to the problems faced by the Venezuelan economy, including the high inflation rate, it was required to take urgent measures to protect workers, adjusting the minimum wage on the basis of the loss of purchasing power; (ii) for the determination of the minimum wage, account is taken of the increase in the cost of the basic basket, which is a technical criterion and is not suited to negotiation; (iii) consultations and social dialogue are carried out in the National Council for Productive Economy, in which the participants include chambers affiliated to FEDECAMARAS and other important employers' organizations in the country, as well as workers' confederations; and (iv) in February 2017, the Government organized a consultation on the issue of the minimum wage through written communications. The Committee notes that, when examining these matters in the context of the 2015 complaint, the Governing Body in November 2017 expressed serious concern at the lack of progress with respect to the decisions taken at its previous sessions and deeply regretted this situation. The Governing Body: (a) urged the Government to engage in good faith in a concrete, transparent and productive dialogue based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations; (b) urged, for the last time, the Government to institutionalize before the end of 2017 a tripartite round table to foster social dialogue for the resolution of all pending issues, and to invite to that effect an ILO high-level mission led by the Officers of the Governing Body to meet with government authorities, FEDECAMARAS and their member organizations and affiliated companies, as well as trade unions and leaders from all social sectors; (c) requested the Director-General of the ILO to make available all necessary support in that regard and the Officers of the Governing Body to report back on the ILO high-level mission at its 332nd Session (March 2018) on the determination on whether concrete progress had been achieved by means of the social dialogue fostered by the round table; and (d) suspended the approval of a decision on the appointment of a Commission of Inquiry pending the report of the high-level mission at its 332nd Session (March 2018). **In this context, the Committee urges the Government to take the necessary measures to**

**ensure that the current process will allow the achievement of positive results and lead to full compliance with the Convention in future. The Committee requests the Government to provide information in this regard.**

The Committee observes that both the Government and all the organizations which provided observations also referred in their communications to the system of the “Socialist Cestaticket”. The Committee considers that issues relating to this system do not lie within the scope of Convention No. 26 and that it is appropriate to address this subject within the framework of Convention No. 95.

### **Protection of wages**

*Article 1 of Convention No. 95. Components of remuneration.* The Committee notes that in the 2016 complaint a phenomenon of “desalarization” in the country is denounced, particularly in relation to the “Socialist Cestaticket”. The Committee notes the Government’s confirmation in its reply that the national legislation provides for this system as a food benefit to protect the purchasing power of workers in relation to food, to strengthen their health, prevent occupational diseases and promote greater labour productivity (section 1 of the Legislative Decree on the Socialist Cestaticket for men and women workers, Decree No. 2066 of 23 October 2015). The Committee also notes that Decree No. 2066 provides that this benefit shall be provided to workers by the employer (section 2). The Committee further notes that the Decree provides, in accordance with section 105(2) of the Basic Labour Act (LOTTT), that the benefit shall not be considered as wages, unless it is so recognized in collective agreements or individual contracts of employment. The Committee recalls that the subject of “desalarization” in relation to food benefits in the country has already been examined in the past (General Survey on the protection of wages, 2003, paragraph 47). In this context, the Committee recalled that, in accordance with *Article 1* of the Convention, all the components of workers’ remuneration, irrespective of how they are denominated or calculated, are protected by the Convention. In light of the characteristics of the “Socialist Cestaticket” (sections 1 and 2 of Decree No. 2066), the Committee considers that, for the purposes of the Convention, this benefit is a component of the remuneration of workers. Accordingly, even though the national legislation provides that the “Socialist Cestaticket” is not in the nature of a wage, this benefit has to be examined in light of the provisions of the Convention.

*Article 4. Payment in kind.* The Committee notes that, in accordance with Decree No. 2066: (i) the employer may choose between various modalities for the provision of the “Socialist Cestaticket”, including the provision of food at the workplace or the provision of food tickets or electronic cards (section 4); (ii) in certain exceptional cases, the benefit may be paid in cash (sections 5 and 6); and (iii) when so required for reasons of social interest, the national executive may order modifications in the modalities, terms and amounts applicable for the provision of the benefit (section 7). In this regard, the Committee notes that, in a series of decrees adopted within the context of the state of emergency and economic urgency since 2016, the amount of the “Socialist Cestaticket” has been increased regularly. The Committee notes that both FEDECAMARAS and the IOE, and the UNETE, CTV, CGT and CODESA, as well as the CTASI, indicate in their observations that since 2016 the value of the “Socialist Cestaticket” has been higher than the minimum wage and that the overall remuneration of workers (the minimum wage and the “Socialist Cestaticket”) does not cover the basic basket. The Committee recalls that *Article 4* of the Convention provides that the partial payment of wages may be authorized in the form of allowances in kind and that in cases in which such payment is authorized, appropriate measures shall be taken to ensure that: (a) allowances in kind are appropriate for the personal use and benefit of the worker and her or his family; and (b) the value attributed to such allowances is fair and reasonable. The Committee also recalls that it has considered that governments, before authorizing the payment in kind of a high proportion of workers’ wages, should carefully assess whether such a measure is reasonable based on its possible repercussions for the workers concerned, having regard to national circumstance and the interests of the working people (General Survey on the protection of wages, 2003, paragraph 118). The Committee considers that these considerations are particularly significant in the case of workers who receive the minimum wage. The Committee notes the Government’s indications that the increase in the amount of the “Socialist Cestaticket” has been necessary to maintain the purchasing power of workers in the context of the problems faced by the Venezuelan economy, and particularly the high rates of inflation, and that this benefit would be paid in cash since May 2017, in accordance with the temporary modalities adopted in the context of the state of emergency and economic urgency. **Nevertheless, the Committee requests the Government to take the necessary measures to engage in dialogue without delay at the national level involving all the employers’ and workers’ organizations concerned so as to examine possible solutions that are sustainable over time, including any necessary adjustment to the “Socialist Cestaticket” system, with a view to ensuring full conformity with Article 4 of the Convention. The Committee invites the Government to consider the possibility of having recourse to ILO technical assistance.**

Finally, the Committee notes the indication by the UNETE, CTV, CGT and CODESA, and the CTASI, in their observations that the non-wage nature of the “Socialist Cestaticket” has an impact on other social benefits which are calculated in relation to the level of workers’ wages. In this regard, the Committee observes that, although this subject could be addressed appropriately in the context of the supervision of other ratified Conventions respecting social protection, it is not regulated by Convention No. 95.

The Committee is raising other matters concerning the application of Convention No. 95 in a request addressed directly to the Government.

## Yemen

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1969)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the Government's indication that Act No. 23 of 14 August 2007 on bidding, outbidding and government warehouses does not provide for the insertion of labour clauses as prescribed by *Article 2* of the Convention. It further notes the Government's indication that the Supreme Commission on Auctions and Bids, by virtue of its memorandum 1/a/m 881 dated 17 August 2014, stated that Act No. 23 does not include any provisions on the terms of employment and workers' wages and that the current law on bidding needs to be amended. It takes good note that the Ministry of Social Affairs and Labour will contact the Supreme Monitoring Authority on bids to carry out the necessary amendments as soon as possible.

With respect to the reference made by the Government to the Labour Code No. 5 of 1995 and amendments made thereto, the Committee notes that the provisions laid down in this Code are not strictly relevant to the subject matter of the Convention and do not give effect to *Article 2* of the Convention which requires the insertion of labour clauses ensuring wages, hours of work and other working conditions to the workers concerned which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations. The application of the general labour legislation is not enough in itself to ensure the application of the Convention, inasmuch as the minimum standards fixed by law are often improved upon by means of collective agreement or otherwise.

*The Committee therefore urges the Government to indicate the measures adopted or envisaged, if necessary with technical assistance of the Office, to ensure that all public contracts contain labour clauses which comply with the requirements of the Convention and to provide information on any further developments with respect to the abovementioned planned amendments to Act No. 23 of 14 August 2007.*

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 26** (Austria, Colombia, Germany, India, Sierra Leone); **Convention No. 94** (Armenia, Bahamas, Barbados, Belgium, Bosnia and Herzegovina, Brazil, Cuba, France: French Polynesia, France: New Caledonia, Grenada, Guyana, Italy, Kenya, Malaysia: Sabah, Malaysia: Sarawak, Netherlands: Aruba, Netherlands: Caribbean Part of the Netherlands, Netherlands: Curaçao, Netherlands: Sint Maarten, Nigeria, Saint Vincent and the Grenadines, Sierra Leone, Singapore, Solomon Islands, Swaziland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom: Anguilla, United Kingdom: British Virgin Islands); **Convention No. 95** (Algeria, Armenia, Austria, Azerbaijan, Colombia, Cuba, Romania, Sierra Leone, Bolivarian Republic of Venezuela); **Convention No. 99** (Algeria, Austria, Colombia, Germany); **Convention No. 131** (Armenia, Azerbaijan, Bosnia and Herzegovina, Cuba, Romania, Spain); **Convention No. 173** (Armenia).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 173** (Austria).

## Working time

### Haiti

#### **Hours of Work (Industry) Convention, 1919 (No. 1)**

(ratification: 1952)

#### **Weekly Rest (Industry) Convention, 1921 (No. 14)**

(ratification: 1952)

#### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)**

(ratification: 1952)

#### **Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)**

(ratification: 1958)

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017, regarding the application of the ratified Conventions on working time. It notes that these observations reiterate the points already raised by the CTSP in 2015 and 2016, particularly regarding the non-observance in practice of the provisions of the Labour Code respecting hours of work and weekly rest and the absence of resources of the labour inspection services to take effective action to combat violations, including in the informal sector.

The Committee also notes the adoption of the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours (the Act on working time) which was published in the official journal *Le Moniteur* on 21 September 2017. As this new Act has an effect on the application of all the Conventions ratified by Haiti on working time, namely Conventions Nos 1 and 30 (hours of work) and 14 and 106 (weekly rest), the Committee considers it appropriate to examine them in a single comment.

The Committee notes that the new Act repeals most of the provisions of the Labour Code which were giving effect to the ratified Conventions on working time, and particularly:

- section 96 which, while establishing the principle of eight hours of work a day and 48 per week, authorized the variable distribution of hours of work over a week, within the limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices; these limits were in conformity with those provided for in *Article 2(b)* of Convention No. 1 (industry) and *Article 4* of Convention No. 30 (commerce and offices);
- sections 97, 98 and 101–104 which provided for possible exceptions to normal hours of work (regulation and limits for overtime); these exceptions were generally in conformity with *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30; and
- section 107, which established a minimum weekly rest period of 24 consecutive hours to be granted preferably on Sunday and simultaneously to the whole staff of an establishment, in conformity with *Article 2* of Convention No. 14 (industry) and *Article 6* of Convention No. 106 (commerce and offices).

The Committee notes that, with the adoption of the Act on working time, the new national legislative framework on hours of work and weekly rest is reduced to the brief content of the following sections of the Act:

- section 2 which, while providing that the normal duration of work remains eight hours a day and 48 hours a week, provides that “the employer and the employee may decide and agree, depending on the needs and on agreement between the parties in conformity with national and international labour standards, to exceed the normal limit of eight hours of work a day, without exceeding 48 hours of work a week”;
- section 3, which provides for a paid break from work of at least half an hour;
- section 4 respecting the remuneration of overtime hours and their recording for monitoring and inspection purposes; and
- section 5, which establishes that workers shall freely negotiate the work schedule which suits them.

In this respect, the Committee notes with *concern* that the new Act does not give effect to a number of important matters covered by the ratified Conventions on working time, in particular:

- the maximum number of hours of work per day is no longer defined in the new Act, while *Article 2(b)* of Convention No. 1 and *Article 4* of Convention No. 30 provide for a limit of nine hours a day in industrial establishments and ten hours a day in commercial establishments and offices;
- the possible exceptions from normal hours of work are no longer regulated, while *Articles 3–6* of Convention No. 1 and *Articles 5–7* of Convention No. 30 provide for specific regulation and limits for overtime; and
- the principle of weekly rest is no longer explicitly recognized, while *Article 2* of Convention No. 14 and *Article 6* of Convention No. 106 provide for a minimum of 24 consecutive hours in every period of seven days.

Moreover, given the formulation of section 5 of the new Law, the Committee considers it necessary to recall the importance of national legislation and practice restricting recourse to exceptions to the double cumulative limit established in the Conventions, namely eight hours in the day and 48 hours in the week, to cases of clear, well-defined and limited circumstances such as accident, real or threatened, force majeure or urgent work to be done to plant or machinery (see General Survey of 2018 on working time instruments, paragraph 119).

Furthermore, the Committee notes with *regret* that the new Act has been adopted while, at the same time, the comprehensive reform of the Labour Code which has been under discussion for several years and for which ILO technical assistance has been received, has not been finalized.

The Committee notes with *deep concern* that the Government's reports have not been received.

*The Committee urges the Government to take immediate measures to ensure that workers benefit from the protection afforded by the ratified Conventions on working time. It further urges the Government to take measures to carry out inspections to ensure that this protection is effective in practice. It expects that the Government will renew its efforts to complete the reform of the Labour Code and that it will be in full conformity with the Conventions ratified by the country, particularly on working time. Lastly, the Committee expects that the next reports will contain full particulars on the subject.*

*[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]*

## Occupational safety and health

### Algeria

**Hygiene (Commerce and Offices) Convention, 1964 (No. 120)**  
(ratification: 1969)

**Occupational Safety and Health Convention, 1981 (No. 155)**  
(ratification: 2006)

**Safety and Health in Construction Convention, 1988 (No. 167)**  
(ratification: 2006)

In order to provide a comprehensive view of the issues relating to the application of the Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 120 (hygiene – commerce and office), 155 (OSH) and 167 (OSH in construction) together.

The Committee notes the information provided by the Government in its reports in response to the Committee's previous comments on the following Articles:

- Convention No. 155: *Articles 4 and 7* (periodic review of national policy and the national situation with regard to OSH); *Article 5(a) and (b)* (control of material elements of work and adaptation of the working environment to workers); *Article 12(a) and (b)* (requirements for workers who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use); and *Article 20* (measures taken to ensure cooperation between employers and workers in the enterprise);
- Convention No. 167: *Article 6* (cooperation between employers and workers).

*Draft on the Labour Code.* The Committee notes the draft on the Labour Code, dated October 2015, which was sent by the Government. It notes that this text contains a set of provisions on OSH (Book VI of the draft) and aims to codify the provisions of the national legislation in force, namely Act No. 88-07 of 26 January 1988 on occupational hygiene, safety and health (Act No. 88-07) and its implementing regulations. The draft provides that all provisions that are contrary to the Labour Code shall be repealed through the adoption of the Code, and that the provisions of regulations adopted pursuant to the legislation concerned shall remain in force until they are replaced, on condition that they are in conformity with the provisions of the Labour Code. **Recognizing the scope of the legislative revision process under way, the Committee requests the Government to take into account the points raised below, in order to ensure the full conformity of the legislation with the ratified Conventions on OSH, in the context of the ongoing reform process.**

### General provisions

#### Safety and health of workers (Convention No. 155)

*Article 13 of the Convention.* *Protection of workers who have removed themselves from a work situation presenting an imminent and serious danger.* **In the absence of a reply from the Government on this point, the Committee once again requests the Government to provide information on any measures taken to ensure the protection of workers against any unjustified consequences if they have removed themselves from a situation which they have reasonable justification to believe presents an imminent and serious danger.**

### Protection in specific branches of activity

#### Hygiene in commerce and offices (Convention No. 120)

*Articles 14 and 18 of the Convention.* *Suitable seats for workers.* *Protection against noise and vibrations.* In its previous comment, the Committee requested the Government to take the necessary measures to give effect to *Articles 14 and 18* of the Convention. The Committee notes that the Government once again refers, in its report, to a draft Executive Decree amending Executive Decree No. 91-05 of 19 January 1991 on the general protection requirements applicable to hygiene and safety in the work environment. **The Committee requests the Government to provide information on all progress made in this regard, and to provide a copy of the aforementioned Executive Decree once it has been adopted.**

#### Safety and health in construction (Convention No. 167)

*Articles 14–24 and 27 of the Convention.* *Technical standards.* *Prevention and protection measures.* *Scaffolds and ladders; lifting appliances and gear; transport, earth-moving and materials-handling equipment; plant, machinery, equipment and hand tools; work at heights; excavations and underground works; cofferdams and caissons; work in compressed air; structural frames and formwork; work over water; and demolition.* *Explosives.* In its previous comment, the Committee noted that the following Executive Decrees gave partial effect to *Articles 14–19 and 21–24* of the Convention: No. 05-12 of 8 January 2005 on specific hygiene and safety requirements applicable to the construction, public works and hydraulics sectors; No. 91-05 of 19 January 1991 on the general protection requirements applicable with regard to occupational hygiene and safety; and No. 2-427 of 7 December 2002 on the conditions for the organization and

provision of information and the training of workers in the area of prevention of occupational risks. It also noted that no information had been provided by the Government on the application of *Article 20*. With regard to *Article 27*, the Committee noted the Government's indication that the provisions governing explosives were being prepared in the context of technical safety regulations. The Committee notes the Government's indication that draft technical regulations have been developed and will be adopted in consultation with the housing, urban planning, public works and transport, and water resources sectors, and with the social and economic partners and parties involved in the prevention of occupational risks. ***The Committee requests the Government to take into account the detailed provisions of Articles 14–24 and 27 of the Convention in the formulation of the technical safety regulations, and to send a copy of the regulations once they have been adopted.***

*Application of the Conventions in practice. Adequate inspection services.* The Committee refers to its comments on the Labour Inspection Convention, 1947 (No. 81).

## Azerbaijan

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1992)**

*Article 6(2) of the Convention. Duty of employers to collaborate when undertaking activities simultaneously at one workplace.* The Committee previously noted the Government's indication that when several employers undertake activities simultaneously at one workplace, their mutual obligations are, in a general manner, specified under contracts on common works, and it requested further information, including extracts from such contracts. The Committee notes the Government's reference, in reply to its previous request, to the provisions of the Labour Code concerning employers' obligations which respect to occupational safety and health (sections 215, 216 and 220). It notes that these provisions do not require employers to collaborate, as they undertake activities simultaneously at one workplace, in order to comply with the prescribed measures without prejudice to the responsibility of each employer for the health and safety of his or her employees. ***The Committee therefore requests the Government to take measures, in law or practice, to ensure that whenever two or more employers undertake activities simultaneously at one workplace they collaborate in order to comply with prescribed occupational safety and health measures.***

## Barbados

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1967)**

*General Observation of 2015.* ***The Committee would like to draw the Government's attention to its general observation of 2015 under this Convention, and in particular to the request for information contained in paragraph 30 thereof.***

*Articles 1, 3, 5–9 and 11–15 of the Convention. Legislation. Consultations. Activities covered and effective protection of workers.* The Committee notes with **concern** that, despite its reiterated comments, there has been no progress in the application of the Convention. The Government recognizes in its report that there are shortcomings in the Radiation Protection Act (Cap. 353A) of 1971, which only gives effect to *Article 10* of the Convention (notification of work involving exposure to ionizing radiations). In addition, the Committee notes the Government's indication that, with the exception of the systems put in place in the main public hospital, workers who are exposed to ionizing radiations are not protected. The Government expresses its intention to revise the Radiation Protection Act (Cap. 353A), in order to bring it into conformity with the Convention. In this regard, the Government indicates that a regulation on radiation protection could be established under the Safety and Health at Work Act (Cap. 356), proclaimed in January 2013.

In response to the previous observations of the Barbados Workers' Union (BWU) concerning the reactivation of the Advisory Committee on Radiation Protection, the Government indicates that a similar tripartite committee would be established to review and propose the necessary revision of the legislation in order to comply with the requirements of the Convention. In this respect, the Committee draws the attention of the Government to the guidance contained in its 2015 general observation. ***While noting the intent of the Government to revise the Radiation Protection Act (Cap. 353A) of 1971, the Committee requests the Government to take the necessary steps, without delay and in consultation with representatives of employers and workers, to give full effect to the abovementioned provisions of the Convention, in light of its 2015 general observation, and to submit a detailed report in this regard.***

## Bosnia and Herzegovina

### **Asbestos Convention, 1986 (No. 162) (ratification: 1993)**

The Committee notes that the report of the Government is silent on the application of the Convention in the Brčko District. ***The Committee requests the Government to provide information on the measures taken or envisaged to ensure that effect is given to each provision of the Convention in the Brčko District.***

## Federation of Bosnia and Herzegovina

*Articles 3(2), 9, 10, 11, 12 and 15(1) of the Convention. National legislation for the prevention, control and protection of workers against exposure to asbestos.* The Committee notes that the Rulebook on Yugoslav standard for maximum allowable concentrations of harmful gases, vapours and aerosols (OG of SFRJ 54/91) prescribes the maximum allowable concentration of asbestos in the atmosphere in the workplace. However, the Government does not indicate if: (a) the national legislation is periodically reviewed in light of the technical progress and advances in scientific knowledge; (b) the national legislation provides that the exposure to asbestos shall be prevented or controlled by prescribing adequate engineering controls and work practices and/or by prescribing special rules and procedures for the use of asbestos; (c) the national legislation provides for the replacement or total or partial prohibition of asbestos, where necessary to protect the health of workers and technically practicable; (d) the use of crocidolite is prohibited; or (e) the spraying of asbestos is prohibited. **The Committee requests the Government to provide information in this respect with regard to the Federation of Bosnia and Herzegovina (BiH).**

*Articles 15(4) and 18. Protective equipment and work clothing.* The Committee notes the Government's indication that, pursuant to section 8 of the Law on Occupational Safety and Health (OG 22/90), the employer is required to provide personal protective equipment to workers if the danger and hazards to which they are exposed cannot be otherwise eliminated. However, the Government does not indicate if: (a) the handling and cleaning of used work and special protective clothing is carried out under controlled conditions; (b) national legislation prohibits the taking home of work and special protective clothing and of personal protective equipment; (c) the employer is responsible for the cleaning, maintenance and storage of work clothing, special protective clothing and personal protective equipment; (d) the employer provides facilities for workers exposed to asbestos to wash, take a bath or shower at the workplace; or (e) the employer provides, maintains and replaces adequate respiratory protective equipment and special protective clothing at no cost to the workers. **The Committee requests the Government to provide information on the measures taken in this respect in the Federation of BiH.**

## Republika Srpska

*Article 17. Demolition of plants and structures and removal of asbestos.* The Committee notes the Government's indication that in the Republika Srpska there are no specialized companies for performing the demolition of plants and structures in which asbestos fibres are present, nor does the legislation provide for special requirements for this type of work. **The Committee requests the Government to take the necessary measures to ensure that the demolition of plants or structures containing friable asbestos insulation materials, and removal of asbestos from buildings or structures in which asbestos is liable to become airborne, are undertaken only by employers or contractors who are recognized by the competent authority as qualified to carry out such work and who have been empowered to undertake such work in the Republika Srpska.**

## Issues common to the Federation of BiH and the Republika Srpska

*Article 15(2). Periodic review and update of limits for the exposure of workers to asbestos.* The Committee notes that the Government does not indicate if the exposure limits for the maximum allowable concentration of asbestos in the atmosphere of working premises established in the Rulebook on Yugoslav standard for maximum allowable concentrations of harmful gases, vapours and aerosols (OG of SFRJ 54/91) are periodically reviewed and updated in light of technological progress and advances in technological and scientific knowledge. **The Committee requests the Government to provide information in this respect with regard to the Republika Srpska and the Federation of BiH.**

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

## Botswana

### Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 1997)

*Article 3 of the Convention. Formulation, carrying out and periodic review of a coherent policy. Legislation.* The Committee previously noted that the Government referred to the Mines, Quarries, Works and Machinery (MQWM) Act and Regulations, Cap. 44:02, and its process of review as giving effect to this provision of the Convention. In this respect, the Committee notes that this review is undertaken by the Mines, Quarries and Works Safety Committee (the MQWS Committee) established under section 5(1) of the MQWM Act, where the Government, employers and workers are represented. The role of the MQWS Committee is "to advise the Minister on the supervision to be exercised over mines, quarries and works, or anything or practice which affects or is likely to affect the safety, health or welfare of persons employed in or at mines, quarries and works". With respect to this review, the Committee notes the copy of the Statutory Instrument No. 33/2005, transmitted by the Government in reply to the Committee's previous request, amending the provisions of the MQWM Regulations on certain occupational safety and health issues. **The Committee requests the Government to continue to provide information on the development, implementation and periodic review of its national policy on safety and health in mines, in consultation with the social partners, including through the MQWS Committee.**

*Article 4(2). Practical implementation of the Convention through technical standards.* With reference to its previous request concerning the content of two technical standards developed by the Botswana Bureau of Standards, the Committee notes that BOS OHSAS 18001:2007 specifies the requirements for an occupational safety and health management system, to enable an organization to control its risks and improve its occupational safety and health performance, and BOS OHSAS 18002:2008 provides detailed guidelines for the implementation of BOS OHSAS 18001:2007.

*Article 5(2)(d). Compilation and publication of statistics. Application in practice.* With reference to its previous comments in which it requested the Government to provide information on the measures taken to address the number of accidents related to the handling of machinery, the Committee notes the Government's indication that inspectors undertake regular inspections and provide advice to mining operators regarding corrective measures to be taken. The Government adds that inquiries into accidents and dangerous occurrences are carried out, that the report submitted to the mining operator contains instructions regarding the steps to be taken to prevent the recurrence of the accident, and that the operator must comply with the instructions and submit information on the remedial measures taken. **Recalling that Article 5(2)(d) provides for the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences in mines, the Committee requests the Government to provide this statistical information. The Committee also requests the Government to continue to provide information on the inspection activities carried out in the mining sector.**

*Article 5(5). Plans of workings.* The Committee previously noted that under regulation 578(1) of the MQWM Regulations, the manager shall ensure that plans are prepared and kept at the mine and that regulation 578(2) permits exemption from the provisions of sub-regulation (1), when the average number of persons employed is less than 100. It also noted the statement of the Government that in practice no exemptions have been granted for such mines and that all mines are inspected by the mine inspectorate periodically to ascertain compliance with regulation 578(1). The Government also indicated that additional measures will be taken to give effect to *Article 5(5)* in the context of the review process of the MQWM Regulations. **Noting an absence of information in the Government's report on the review process, the Committee requests the Government to take the necessary measures to ensure that the legislation provides that employers shall prepare before the start of operations and keep available at the mine site appropriate plans of workings in respect of all mines, including mines where less than 100 persons are employed. In the meantime, it requests the Government to continue to provide information on any exemptions granted pursuant to regulation 578(2) of the MQWM Regulations.**

*Article 13(1)(b). Right of workers to obtain inspections and investigations; Article 13(1)(d). Right of workers to obtain information relevant to their safety or health; Article 13(1)(e). Right of workers to remove themselves; Article 13(1)(f). Right of workers to collectively select safety and health representatives; Article 13(2)(b). Right of safety and health representatives to: (i) participate in inspections and investigations; and (ii) monitor and investigate safety and health matters; Article 13(2)(d). Right of safety and health representatives to consult with the employer on safety and health matters, including policies and procedures; Article 13(2)(f). Right of safety and health representatives to receive notice of accidents and dangerous occurrences; Article 13(3). Procedures for the exercise of the rights of workers and their safety and health representatives pursuant to Article 13(1) and (2); and Article 13(4). Protection against discrimination and retaliation.* In its previous comments, the Committee noted the Government's indications that effect was given to these provisions of the Convention in practice and that they would be taken into account in the review process of the MQWM Regulations. **Noting that the Government does not provide any new information in this respect, the Committee once again requests the Government to take the necessary measures to ensure that the national legislation provides for all the requirements contained in the abovementioned provisions of the Convention.**

## Brazil

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1990)**

*Articles 1 and 2. Periodic determination and replacement of carcinogenic substances and agents.* In its previous comment, the Committee requested the Government to take the necessary measures to periodically determine carcinogenic substances and agents, and to provide information on the measures adopted or envisaged for the replacement of asbestos and other carcinogenic substances and agents. The Committee notes with *interest* the publication of the national list of substances that are carcinogenic for humans (LINACH – Inter-ministerial Decree No. 9 of 2014). The Government indicates that the LINACH is updated every six months. Furthermore, Annexes 12 and 13 of Regulatory Standard No. 15 (Unhealthy activities and operations), respectively, establish tolerance limits for mineral dust, including asbestos, and requirements for activities involving carcinogenic chemicals, including the prohibition of exposure or contact in certain cases. Regarding asbestos, the Committee notes with *interest* that on 29 November 2017 the Supreme Federal Court of Brazil (STF) found the Law No. 9.005 of 1995, which regulates the extraction, use, marketing and transport of asbestos and products containing asbestos, as well as of natural and artificial fibres of any origin, used for the same purpose, to be unconstitutional. The decision of the STF bans the production, commercialization and use of asbestos in the country.

## Cabo Verde

### **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 2000)

*Article 4 of the Convention. Formulation, implementation and periodic review of a coherent national policy on occupational safety, occupational health and the working environment. Consultation with the most representative organizations of employers and workers. Article 8. Measures to give effect to the national policy.* In its previous comment, the Committee noted the participation of the country in an ILO technical assistance programme, including the organization of a tripartite workshop in August 2013 with the objective of developing a national policy. It noted that, following the workshop, a national occupational safety and health (OSH) profile was developed and the principle elements of the national policy identified. The Committee notes with **satisfaction** the information provided by the Government in its report that the National Occupational Safety and Health Policy was unanimously approved by the Social Dialogue Council and adopted by Resolution No. 20/2014 of 14 March 2014 of the Council of Ministers. The objective of the National Policy is to promote and maintain at the national level the highest level of physical, mental and social well-being of workers in all occupations and professions and to prevent accidents and health effects which are the consequence of work or are related to work, or occur during work, with a view to reducing to a minimum, in so far as is reasonably possible, the causes of risks inherent in the working environment. The Committee notes that Resolution No. 20/2014 also establishes a Tripartite Occupational Safety and Health Commission responsible for following up the implementation of the National Policy and periodically proposing its revision, within the framework of a continuous improvement process. The Resolution also provides that an executive committee, composed of two representatives of the Ministry responsible for labour matters and two representatives of the Ministry responsible for health matters, is responsible for coordinating and supervising the implementation of the National Policy and the national OSH plan. **The Committee requests the Government to provide information on the measures taken by the Tripartite Occupational Safety and Health Committee in the context of the implementation of the National Policy, and the frequency envisaged for the review of the National Policy.**

*Articles 13 and 19(f). Protection of workers who have removed themselves from situations presenting an imminent and serious danger.* In its previous comment, the Committee noted the Government's indications that the legal framework still needed to be adopted to give full effect to these Articles. However, the Committee notes that the Government limits itself in its report to referring to section 241(1)(e), (3) and (4) of the Labour Code, which authorize workers to terminate the employment relationship, particularly in cases of serious risks to their health or threats to their safety. In such cases, workers are entitled to compensation calculated on the basis of their years of service. The Committee observes that these provisions do not specifically cover the requirements set out in *Articles 13 and 19(f)* of the Convention. **The Committee once again requests the Government to give effect to these Articles of the Convention and to provide information on this subject.**

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

## Canada

### **Asbestos Convention, 1986 (No. 162) (ratification: 1988)**

The Committee notes the observations by the Confederation of National Trade Unions (CSN) and the Canadian Labour Congress (CLC) received in 2015.

*Articles 3, 4, 10 and 11 of the Convention. Measures to be taken for the prevention and control of health hazards due to occupational exposure to asbestos. Periodic review in the light of technical progress and scientific knowledge. Consultation with the most representative organizations of employers and workers. Replacement of asbestos and the total or partial prohibition of the use of asbestos.* The Committee previously noted that Canada was one of the main producers of asbestos and along with the Conference Committee on the Application of Standards in 2011, requested the Government to ensure the adoption of the strictest standards limits for the protection of workers' health as regards exposure to asbestos. It also noted that since 2011 there had been no asbestos production in the country.

The Committee notes the statement by CLC calling for the ban of asbestos, citing scientific and technical information that points to the need for a total ban of the product. It also notes that the CSN considers that compliance with the Convention requires the prohibition of all types of asbestos and that it calls on the Government to undertake a revision of the national legislation regarding exposure to asbestos in this respect, along with a programme to assist workers in this industry with such a transition, including retraining.

In this respect, the Committee notes with **interest** that in December 2016, the Government published a Notice of intent to develop regulations respecting asbestos that would prohibit all future activities respecting asbestos and products containing asbestos. The Notice of intent received comments from three industry associations, eight labour organizations and non-governmental organizations, and six regional stakeholders. It notes that, subsequently, a consultation document describing the proposed regulatory approach was published in April 2017, and that the responses received to the document will be considered in the development of the proposed regulations. The consultation document indicates that the

Government is proposing to develop regulations under the Canadian Environmental Protection Act to prohibit the import, use, sale and offer for sale of asbestos, as well as the manufacture, use, sale, offer for sale and import of products containing asbestos. The consultation document indicates that following public consultations, it is hoped that regulations will be published in the autumn of 2018. *The Committee welcomes the Government's initiative and requests it to pursue its efforts for the prevention and control of, and protection of workers against, health hazards due to occupational exposure to asbestos. It requests the Government to provide a copy of the regulations developed in this respect under the Canadian Environmental Protection Act, once adopted.*

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

## Chile

### **Occupational Health Services Convention, 1985 (No. 161)** (ratification: 1999)

### **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)** (ratification: 2011)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 161 (occupational health services) and 187 (promotional framework for OSH) together.

#### **Occupational Health Services Convention, 1985 (No. 161)**

*Articles 2 and 4 of the Convention. National policy and consultation.* In its previous comments, the Committee requested the Government to provide information on the formulation and implementation of a coherent national policy on occupational health services and the consultations held in this regard. The Committee notes with *interest* the Government's indication that the national OSH policy (Supreme Decree No. 47 of 4 August 2016) has a component on occupational health services which establishes the fundamental principles for the operation of the administrative bodies responsible for providing social security for employment accidents and occupational diseases. The OSH policy was developed in three stages, during which consultations were held at the national and regional levels, with the participation of representatives of employers' and workers' organizations.

*Article 5(b) and (f). Surveillance of workers' health and the factors in the working environment and working practices which may affect workers' health. Silica.* The Committee recalls that for several years it has been requesting the Government to take measures to ensure the surveillance of workers' health and factors in the working environment where workers are exposed to silica. The Committee notes with *interest* the approval of the Protocol on the surveillance of the working environment and the health of workers exposed to silica (Resolution No. 268 of 2015) and Circulars Nos 2706, 2893, 2971 and 3064 of 2010, 2012, 2013 and 2014 of the Social Security Supervisory Authority which instruct the employers' insurance funds and the Occupational Safety Institute to develop programmes for the surveillance of the working environment and the health of workers exposed to silica. The purpose of the Protocol is to reduce the incidence and prevalence of silicosis, through guidelines for the development, application and supervision of programmes for the epidemiological surveillance of the health of workers exposed to silica and the environments in which they work. The guiding principles and strategic objectives of the National Silicosis Eradication Plan (PLANESI) must be taken into account, with the aim of increasing the number of persons monitored and improving the efficiency and timeliness of control measures in workplaces, to prevent the deterioration of workers' health, and develop procedures for the early detection of silicosis in workers.

#### **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)**

#### **Follow-up to the decision of the Governing Body (representation made under article 24 of the ILO Constitution)**

The Committee recalls that the Governing Body approved, in March 2016, the report of the committee set up to examine the representation alleging non-observance by Chile of Convention No. 187, made under article 24 of the ILO Constitution by the College of Teachers of Chile AG (GB.326/INS/15/6). The Committee notes that the College of Teachers of Chile AG made a second representation under article 24 of the ILO Constitution, in which it alleges non-observance by Chile of the recommendations relating to several issues raised in the previous representation. In this regard, the Committee notes that in March 2017 the Governing Body, on the recommendation of its Officers, found that the second representation was receivable and invited the Committee to examine the allegations contained in the latest communication from the College of Teachers of Chile AG, in the context of the follow-up given to the recommendations relating to the previous representation at its session in November–December 2017. In this regard, the Committee also notes that the Governing Body postponed the decision to appoint a tripartite committee to examine the new representation (document dec-GB.329/INS/21/3).

*Article 4(1) and (2) of the Convention. National OSH system.* The Committee notes that, in its latest representation, the College of Teachers of Chile AG alleges that: (a) the Government has not implemented the recommendations of the tripartite committee relating to the previous representation, as it has not determined the time to be allocated for teacher appraisals in consultation with the College of Teachers of Chile AG, and Act No. 20.903 (Teaching Careers Act) does not indicate the number of non-teaching hours to be allocated to teachers for appraisals, or where they are to be undertaken; and (b) the hours spent on appraisals constitute additional, unpaid and mandatory work, which is therefore damaging to the occupational health of teachers. With regard to this issue, in its previous comment, the Committee requested the Government to provide information on the review of the legislation on the teacher appraisal process and where it is to be undertaken.

The Committee notes the Government's indication that: (1) with respect to the alleged lack of consultations, the College of Teachers of Chile AG participated directly in the formulation of the teacher appraisal process established by the Teaching Careers Act; (2) with respect to the time required to carry out appraisals, while the aforementioned Act does not refer explicitly to the time at which such activities are to be carried out, the Office of the Comptroller General of the Republic has determined in repeated opinions that this type of appraisal is a non-teaching activity, and must be carried out within working hours. The Government also indicates that work performed outside of working hours shall be considered as overtime, and be paid as such (Opinions of the Comptroller No. 42.299 of 2008 and No. 91.155 of 2014); and (3) as appraisals are a mandatory process for teaching professionals in educational establishments that are dependent on municipal authorities, the parties are required to agree on, in the employment contracts as non-teaching curricula, the hours to be spent on this appraisal process (Labour Directorate, Ordinance No. 5414/100 of 2010). Moreover, the municipal authorities are responsible for adopting measures to ensure that such evaluation activities are carried out (Opinion of the Comptroller No. 62.598 of 2012).

Furthermore, in its previous comments, the Committee observed that the Government was taking measures to adjust the relevant legislation to address the occupational safety and health issues of teachers, mainly with regard to the excessive workload, and to revise section 69 of the Teachers' Statute and its Regulations (Act No. 19.070 of 1996, as amended) with regard to the proportion of time assigned to non-teaching activities. The Government indicates that it is in the process of developing regulations to determine more specifically the work and activities that may be included in the definition of non-teaching curricular hours, in accordance with section 6 of the Teachers' Statute, as amended by the Teaching Careers Act. With respect to the proportion of hours spent on non-teaching activities, since 2017, teaching hours have been reduced and non-teaching hours have been increased (70 per cent teaching hours). Non-teaching hours will increase again in 2019 (65 per cent teaching hours). *The Committee requests the Government to provide detailed information on the consultations held on the development of the teaching appraisal process established by the Teaching Careers Act, and on the progress made in the formulation of regulations to determine non-teaching curricular hours, in consultation with the most representative employers' and workers' organizations.*

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

## Colombia

**Asbestos Convention, 1986 (No. 162)**  
(ratification: 2001)

**Chemicals Convention, 1990 (No. 170)**  
(ratification: 1994)

**Prevention of Major Industrial Accidents Convention, 1993 (No. 174)**  
(ratification: 1997)

In order to provide a comprehensive view of the issues relating to the application of the ratified occupational safety and health Conventions, the Committee considers it appropriate to examine Conventions Nos 162 (asbestos), 170 (chemicals) and 174 (major industrial accidents) together.

The Committee notes the observations of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Labour (CGT), and the observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), on the application of Convention No. 162, which were received in 2016. The Committee also notes the observations of the CTC and the CUT on the application of Convention No. 174, received in 2015, and the Government's reply in this regard.

### Convention No. 162: Asbestos

*Articles 3(2) and 14 of the Convention. Periodic review of national laws and regulations. Labelling.* In its previous comments, the Committee indicated that, for the purposes of the Convention, products which contain less than 1 per cent of asbestos are not considered as products "free of asbestos". Accordingly, with a view to ensuring that the labelling of products is in conformity with the Convention, the Committee urged the Government to provide information on the measures adopted to re-examine the concept of "free of asbestos", as set out in the Regulations on health and safety in relation to chrysotile and other fibres of similar use (Decision No. 007 of 4 November 2011 of the Ministry of Health

and Social Security). The Committee notes the Government's indication in its report that the matter is being assessed and it is hoped to reach agreement with the social partners on the referral for consideration to the National Occupational Safety Commission on Chrysotile Asbestos and Other Fibres of the re-examination of the standard as indicated by the Committee and accordingly to consider, determine and update the concept of "free of asbestos". In this respect, the ANDI and the IOE indicate that they would support the development of a technical document to supplement the Decision and clarify the prevention and protection measures that are necessary under the Convention. ***The Committee requests the Government to provide information on the outcome of the consultations and the decision that is adopted in relation to the re-examination of the regulatory definition of "free of asbestos" and to ensure that all products containing asbestos are labelled in accordance with Article 14 of the Convention. It also requests the Government to provide information on the measures taken to monitor the application of Article 14 of the Convention in practice.***

*Article 17. Demolition work.* In its previous comments, the Committee requested the Government to establish a system under which only employers or contractors who are qualified can carry out the types of work referred to by this Article of the Convention and which would give effect to the requirement for the employer or contractor to draw up a workplan, as provided in *Article 17(2)*. The Government indicates that, in view of the geothermic situation of the country, asbestos and friable insulation materials containing asbestos have never been used in construction. The Government also indicates that regulation No. 4.5 of the Regulations on health and safety in relation to chrysotile and other fibres of similar use contains provisions on construction, modification, demolition and removal work, in accordance with *Article 17(2)* of the Convention. However, the Government adds that the current regulations do not provide for a system under which only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in this Article of the Convention. The ANDI and the IOE also indicate that they would support the development of a technical document to supplement the Regulations and ensure compliance with the requirements of *Article 17* of the Convention. ***Noting the Government's explanations and the position of the ANDI and the IOE in this regard, the Committee once again requests the Government to take the necessary measures to ensure that only employers or contractors recognized by the competent authority as qualified may carry out the types of work referred to in Article 17 of the Convention.***

#### Convention No. 170: Chemicals

*Article 9 of the Convention. Responsibilities of suppliers.* With reference to its previous comments on the responsibilities of suppliers, the Committee notes the Government's reference to Decisions Nos 331 of 1993 and 399 of 1997 of the Andean Community. However, these decisions only apply to the international road transport of goods and to international multimodal transport, and do not cover the provisions of the Convention. ***The Committee once again requests the Government to provide information on the measures adopted or envisaged in respect of the responsibilities of suppliers, whether they are manufacturers, importers or distributors of chemicals, in accordance with Article 9 of the Convention.***

*Articles 10 and 11. Responsibilities of employers for the identification and transfer of chemicals.* With reference to its previous comments, the Committee notes the Government's indication that a draft Decree for the transposition to the national level of the Globally Harmonized System of Classification and Labelling of Chemicals is in the process of being adopted. ***The Committee requests the Government to ensure that the Decree in the process of being adopted provides for the responsibilities of employers with respect to the identification and transfer of chemicals, in accordance with Articles 10 and 11 of the Convention.***

*Article 18. Rights of workers to remove themselves from danger and to obtain information.* With reference to its previous comments, the Committee notes that, in accordance with section 3 of Decision No. 2400 of 1979 (certain provisions concerning accommodation, and health and safety at the workplace), workers are required to notify immediately their superiors of the existence of defects or faults in plant, machinery, work processes and operations and the hazard control system. The Committee nevertheless observes that the provision referred to by the Government does not specifically establish the right of workers to remove themselves from danger and to obtain the information set out in *Article 18(3)* and *(4)* of the Convention. ***The Committee once again requests the Government to provide information on the measures adopted or envisaged to establish the right of workers: (a) to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health, and to be protected against undue consequences of such action; and (b) to obtain information in accordance with Article 18(3) and (4) of the Convention.***

#### Convention No. 174: Prevention of major industrial accidents

*Article 4 of the Convention. National policy and consultation of the social partners.* In its previous comments, the Committee requested the Government to provide information on: (a) the content of the national policy, specifically in relation to the risk of major accidents with respect to protection of workers, the public and the environment; and (b) the consultations held with the social partners in this regard. The Committee notes that, within the framework of Act No. 1523 of 2012 (national policy and national system for the management of the risk of disasters), Decree No. 308 of 2016 (National Plan for the Management of the Risk of Disasters, (PNGR 2015–25)) was adopted and envisages the implementation of various information management projects relating to the risk of disasters of technological origin. The Committee also notes the preliminary draft of the Decree on the adoption of the Programme for the Prevention of Major

Accidents transmitted by the Government. The Government indicates that the draft Decree has received comments from the various actors in the National System for the Management of the Risk of Disasters in the context of the Technical Advisory Commission on Industrial and Technological Risks (CNARIT), established as part of the national policy under Decision No. 1770 of 2013. The Government adds that the draft Decree was opened to public consultation on 31 October 2017 for a period of 14 days, during which comments were received from the public. Nevertheless, the Committee notes the observations of the CUT on the lack of participation by workers' representatives in the CNARIT and in other inter-institutional dialogue bodies envisaged by the national system for the management of the risk of disasters. The Committee also notes that the draft Decree does not apply to the exploration and extraction of mineral and energy resources or to sanitary landfills and security landfills or cells. In this respect, the Committee recalls that, in accordance with *Article 1(4)* of the Convention, the Government may, after consulting the representative organizations of employers and workers concerned, exclude from the application of the Convention installations or branches of economic activity for which equivalent protection is provided. ***The Committee requests the Government to provide information on the measures adopted or envisaged for the consultation of the most representative organizations of employers and workers in relation to the formulation, implementation and periodic review of a coherent national policy concerning the protection of workers, the public and the environment against the risk of major accidents. The Committee requests the Government to provide detailed information on the manner in which the exploration and extraction of mineral and energy resources and sanitary and security landfills are covered by protection equivalent to that set out in the Convention.***

*Article 5. System for the identification of major hazard installations.* In its previous comments, the Committee requested the Government to adopt measures for the identification of major hazard installations in consultation with the social partners. The Committee notes the observations of the CUT concerning the absence of a system of identification. The Committee also notes that the third follow-up and evaluation report of the PNGR (August 2017) emphasizes the progress made in relation to the classification and enumeration of hazardous installations due to chemical risks. In this regard, sections 7 and 8 of the draft Decree on the Programme for the Prevention of Major Accidents establishes a mechanism to compile information on installations exposed to the risk of major accidents, which shall be determined by the Ministry of Labour during the 12 months following the publication of the Decree. ***The Committee requests the Government to provide information on the progress achieved, in consultation with the most representative organizations of employers and workers and other interested parties who may be affected, in the establishment of a system for the identification of major hazard installations, in accordance with Article 5 of the Convention.***

The Committee is raising other matters relating to the application of the occupational safety and health Conventions (protection against specific risks) in a request addressed directly to the Government.

***[The Government is asked to reply in full to the present comments in 2018.]***

## Japan

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1973)**

*General observation of 2015.* ***The Committee wishes to draw the Government's attention to its general observation of 2015 under the Convention, and in particular to the request for information contained in paragraph 30 thereof.***

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC-RENGO), submitted with the Government's report.

*Articles 2, 12 and 13 of the Convention.* *Application of the Convention to all activities involving exposure of workers to ionizing radiations in the course of their work and medical surveillance.* 1. *Emergency workers.* The Committee previously noted that, due to the accident at the Fukushima Daiichi Nuclear Power Plant following the earthquake in 2011, an Ordinance on special measures was in force between March and December 2011 which raised the emergency radiation exposure dose limit to 250 mSv. Following the stabilization of the nuclear reactors, the emergency radiation exposure dose limit was returned to 100 mSv. However, the Ordinance on the prevention of ionizing radiation hazards (No. 41) was amended in 2015 to provide that the Minister of Health, Labour and Welfare may set a special dose limit not exceeding 250 mSv in situations in which it is difficult to observe the dose limit of 100 mSv during exceptional emergency works.

The Committee notes that the Government states, in response to its previous request, that workers engaged in exceptional emergency work are limited to those who have given their consent in advance, received necessary education, and are designated as nuclear disaster prevention staff by business operators. The Government further states that section 7-3 of Ordinance No. 41 disallows those other than nuclear disaster prevention staff (as outlined in section 8 of the Act on Special Measures Concerning Nuclear Emergency Preparedness (Act No. 156 of 1999)) from engaging in exceptional emergency work, and when nuclear operators appoint nuclear disaster prevention staff, labour contracts can only be concluded after a clear indication of the working conditions, including engagement in exceptional emergency work. The Government states that should workers have to engage in emergency work in the future, their wishes must be considered to the extent possible in the assignment of work. The Government indicates that, in accordance with Ordinance No. 41 and the Special Education Rule for Exceptional Emergency Works (Ministry of Health, Labour and Welfare Notification No. 361 of 2015), workers engaged in emergency work must be provided with a minimum of 12.5 hours of

education covering the health effects of ionizing radiation and the required methods of work. The Committee notes the Government's indication that a database has been established of workers engaged in emergency work, as well as a database for the long-term health management of these workers, which is used to implement cancer screenings.

The Committee once again refers to paragraph 37 of its general observation of 2015, which states that, in emergency situations, reference levels should be selected to be within, or if possible below, the 20–100 mSv band. Measures should be taken to ensure that no emergency worker is subject to an exposure in an emergency in excess of 50 mSv. As indicated in paragraph 22 of the general observation, response organizations (as defined in note n.19 of the general observation, “a response organization is an organization designated or otherwise recognized by a State as being responsible for managing or implementing any aspect of an emergency response”) and employers should ensure that emergency workers who, in exceptional situations, undertake actions in which the doses received might exceed 50 mSv do so voluntarily; have been clearly and comprehensively informed in advance of the associated health risks, as well as of available measures for protection and safety; and that they are, to the extent possible, trained in the actions that they may be required to take. ***The Committee urges the Government to take further measures to ensure that the protection provided in the Convention applies to emergency workers. Particularly, noting the Government's indication concerning the training and information provided to emergency workers, as well as the Government's indication that the workers' wishes must be considered to the extent possible in the assignment of emergency work, the Committee requests the Government to take measures to ensure that workers who may be exposed to the exceptional emergency dose limits do so voluntarily. Recalling that Article 6 of the Convention provides that maximum permissible doses of ionizing radiations shall be kept under constant review in the light of current knowledge, the Committee requests the Government to provide information on measures taken to review the maximum permissible dose established for this category of workers. In addition, and taking due note of the information provided by the Government, the Committee further requests the Government to continue to provide detailed information on the long-term measures taken to monitor those workers exposed to higher doses of ionizing radiation following the 2011 earthquake.***

2. *Workers engaged in decommissioning and decontamination work.* The Committee previously noted the observations of the JTUC–RENGO that further protective measures were necessary with respect to workers engaged in the decommissioning of the Fukushima Daiichi Nuclear Power Plant. It noted that the Ordinance on the prevention of ionizing radiation hazards for decontamination and related works (No. 152) required employers engaged in decontamination works to carry out: dose monitoring; exposure reduction measures, including a preliminary survey of worksites; measures for the confinement of contamination including surface screening of workers and equipment; training of workers; and health-care management.

The Committee notes the statement of the JTUC–RENGO calling for the extension of long-term health management efforts to workers who have been exposed to a threshold radiation dose even though they are not directly engaged in emergency work, and to extend radiation exposure management to all workers engaged in the decommissioning of the Fukushima Daiichi Nuclear Power Plant, even after employment separation. The Committee notes that the Ministry of Health, Labour and Welfare formulated in 2015 the Guidelines on Occupational Safety and Health Management at the Fukushima Daiichi Nuclear Power Plant, which require the contractor to implement health management measures for workers. In this respect, the contractor has established a system to ensure that workers of primary contractors and their subcontractors receive medical examinations and that subsequent measures are taken based on the results. In addition, the Ministry has established telephone consultations with doctors for business operators on health management methods, available every day, and contact points within the premises of the Fukushima Daiichi Nuclear Power Plant for face-to-face consultations, available once a week. The Committee notes the Government's statement that, in order to manage the radiation exposure dose of workers engaged in decontamination work, along the same framework as nuclear workers, the Radiation Effects Association has established the Radiation Exposure Dose Registration System for Workers Engaged in Decontamination Work, and it has requested business operators engaged in decontamination work to participate in this system. The Government indicates that it has taken a number of measures to ensure compliance with radiation protection measures among business operators engaged in decontamination work. With respect to the monitoring of working conditions of those engaged in decommissioning and decontamination work, the Committee refers to its comments under the Labour Inspection Convention, 1947 (No. 81). ***The Committee urges the Government to pursue its efforts to ensure that the protection provided in the Convention is applied to workers engaged in decontamination and decommissioning work, and requests it to continue to provide information on the measures it is taking in this regard. In that respect, it requests the Government to provide information on the long-term health management measures it is taking with respect to this category of workers, and to indicate if participation in the Radiation Exposure Dose Registration System for Workers Engaged in Decontamination Work is obligatory for business operators engaged in decontamination work.***

*Article 7. Exposure of workers under the age of 18.* The Committee previously noted the observations of the JTUC–RENGO that violations of the law related to persons under the age of 18 years working in decontamination had been reported.

The Committee notes the information provided by the Government, in response to its previous request, that in July 2013 and February 2015, employers were arrested for violations of section 62 of the Labour Standards Act (which prohibits persons under 18 years of age from engaging in hazardous work) for making workers under 18 years of age engage in decontamination work. The Government further indicates that labour standards offices have disseminated

leaflets to raise awareness among business operators that engaging persons under 18 years of age in such work is prohibited, and on the measures that must be taken with respect to age verification. ***The Committee requests the Government to continue to provide information on the measures it is taking to ensure the enforcement of the national legislative provisions related to occupational exposure of workers under the age of 18, including the specific penalties applied in cases of violations of section 62 of the Labour Standards Act related to decontamination work, and on the related protection measures taken for those workers under 18 who have been unlawfully engaged in this work.***

## Mexico

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)**

The Committee notes the observations of the National Union of Workers of the Federal Roads and Bridges Access and Related Services (SNTCPF), received in 2016, and the observations of the Confederation of Employers of the Mexican Republic (COPARMEX) and of the Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN), attached to the Government's report.

*Article 7 of the Convention. Review of particular areas with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results. Mining sector. State of Coahuila de Zaragoza.* In its previous comments, the Committee asked the Government to provide information on the major problems identified in the mining sector in the state of Coahuila de Zaragoza (Coahuila), effective methods for dealing with them and priorities of action, and an evaluation of the results. In order to identify the problems, the Committee asked the Government to provide information on the situation in the mining sector in Coahuila. The Committee notes the observations of the SNTCPF regarding the lack of effective registration of workers in mines and the lack of adequate protection for occupational safety and health (OSH) in certain types of coalmines.

The Government provides information in its report on: (a) the number and types of mines, and the estimated proportion on non-registered miners in Coahuila; and (b) occupational accidents in mines both at the national level and in Coahuila registered by the Mexican Social Security Institute (IMSS). As regards the measures taken in relation to the alleged lack of adequate OSH protection in certain types of coalmines, the Government indicates that: (a) through the labour reform of 2012, the Federal Labour Act of 1970 was expanded to include Chapter XIIIbis on mineworkers, the provisions of which are applicable in all coalmines, whether underground mines, slope mines, opencast mines, sloping and vertical shafts, and also to any form or type of small-scale extraction activity; and (b) the federal Government maintains a permanent team in coalmines to conduct inspections, whose functioning is described below in connection with the application of *Article 9* of the Convention. The Government also indicates that: (a) unregistered, illegal workplaces, where workers are exposed to major risks, are the main problem in the mining sector in Coahuila; (b) the measures proposed to resolve the issue are the handling of complaints and the conducting of censuses in the region to identify unofficial workplaces; (c) the order of propriety for adopted measures is: identification of the problem, issuing of an inspection order and the execution thereof, and adoption of the necessary measures to solve the specific problem which has been investigated; and (d) as regards the evaluation of the results, the IMSS statistics for 2010–16 on the mining and use of coal, graphite and non-metallic minerals in underground mines in Coahuila indicate that there was a 50 per cent reduction in occupational accidents, from which 54 deaths were registered, with 80 per cent of these fatal occupational accidents occurring between 2010 and 2012. ***While duly noting the information provided on the measures taken and the significant decrease in the number of accidents in the mining sector in Coahuila, the Committee requests the Government to continue providing information on available statistics relating to the number of accidents in the mining sector.***

*Article 9. Adequate and appropriate system of inspection. Adequate penalties.* In its previous comments, the Committee asked the Government to provide information on: (a) the labour inspection system and the adequacy of its resources, and also its functioning in unregistered, illegal mines; and (b) adequate penalties for violations of laws and regulations, including in the event of the employer's refusal to authorize access for the labour authority. The Committee notes the observations of the SNTCPF regarding: (a) the ineffectiveness of the inspection system owing to lack of resources; and (b) the failure to effectively enforce penalties, which include the closure of unregistered mines, and the resumption of operations in mines that were previously closed. The Committee also notes the observations of the COPARMEX and the CONCAMIN concerning the measures taken by the labour inspectorate to ensure observance of the regulations. The Committee notes the Government's indication that inspection activities ensure enforcement of the labour standards, including preventive OSH measures in unregistered and unofficial mines. Although there have been cuts in the Government's budget owing to the austerity measures implemented at national level, the Government indicates that more effective actions have been organized through inspection programmes focusing on high-risk activities, and there were no cuts to the budget of the Federal Labour Office in Coahuila in the 2016–17 financial year. As regards adequate and effective penalties, the Committee notes the data supplied by the Government, including fines and restrictive measures, such as the suspension of mining work and projects. The Government also indicates, with regard to any refusal by the employer to receive the labour inspectorate, that since the reform of 2012 section 1004-A of the Federal Labour Act has provided that, to counteract employers' refusal to allow labour inspections to proceed, a fine of 250 to 5,000 minimum

wage equivalence shall be imposed on any employers who deny access to the labour authorities to conduct inspection and monitoring activities in their workplaces. **Noting the significant number of fatal occupational accidents, the Committee requests the Government to continue providing available statistics on the number of inspections conducted in the sector, the number and nature of reported violations, and the number, nature and causes of accidents in the mining sector.**

*Article 13. Protection of workers who remove themselves from work situations presenting an imminent and serious danger to their life or health.* In its previous comments, the Committee asked the Government to take the necessary steps to bring the legislation into conformity with *Article 13* of the Convention. The Committee notes the Government's indication in its report that, under section 343-D of the Federal Labour Act, as amended in 2012, workers can refuse to provide their services in view of the fact that the Joint Safety and Health Committee, experts in the matter, has confirmed the existence of situations that present an imminent danger to the life, physical integrity or health of workers. The Government also highlights paragraph 2 of the abovementioned section, which establishes the duty of workers to remove themselves from work situations presenting an imminent and serious danger, and to notify the employer, any member of the Joint Safety and Health Committee, or the labour inspectorate of these circumstances. However, the Committee recalls that the right of workers to remove themselves from situations when there is a reasonable justification to believe that there is a serious and imminent danger remains an essential foundation for the prevention of occupational accidents and diseases and must not be undermined by any action by the employer. This right is linked to the duty of workers to inform their employer about such situations, although this obligation should not be seen as a prerequisite for the exercise of the right of removal (2017 General Survey on certain occupational safety and health instruments, paragraph 298). **The Committee requests the Government once again to take the necessary steps to abolish any requirement of prior notification of, or authorization from, the Joint Safety and Health Committee for workers to be able to exercise their right to remove themselves from danger, in accordance with the terms of Article 13 of the Convention.**

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

## Portugal

### **Asbestos Convention, 1986 (No. 162) (ratification: 1999)**

The Committee notes the observations of the General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN), received with the Government's report.

*Article 21 of the Convention. Notification of occupational diseases caused by asbestos.* The Committee notes the statistical information provided by the Government on the number of workers exposed to asbestos, cases of occupational disease reported and the activities carried out by the labour inspection services to enforce the relevant legislation. The Committee notes with **concern** that the CGTP–IN refers, with respect to the under-reporting of occupational diseases related to asbestos exposure, to a 2015 study, according to which 97 per cent of cases of malignant mesothelioma caused by exposure to asbestos were not reported as occupational diseases. **Recalling the resolution concerning asbestos, adopted by the 95th Session of the International Labour Conference, June 2006 and, referring to its comments on the application of Articles 4(1) and 11(d) and (e) of the Occupational Safety and Health Convention, 1981 (No. 155), and Articles 2–5 of its Protocol of 2002, concerning the measures needed and taken to address the under-reporting of occupational diseases, the Committee requests the Government to provide information on the measures taken to ensure the functioning of the system of notification of occupational diseases caused by asbestos and, in that regard, to indicate the number of cases of occupational diseases caused by exposure to asbestos that have been reported in the country over the last five years as well as the cases of malignant mesothelioma over the same period.**

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 13** (Djibouti); **Convention No. 115** (Denmark, Djibouti, Egypt, Iraq, Lithuania, Syrian Arab Republic, Tajikistan); **Convention No. 119** (Bosnia and Herzegovina); **Convention No. 120** (Azerbaijan, Bulgaria, Djibouti); **Convention No. 127** (Algeria); **Convention No. 136** (Bosnia and Herzegovina, Brazil, Colombia); **Convention No. 139** (Bosnia and Herzegovina, Brazil, Iraq); **Convention No. 148** (Bosnia and Herzegovina); **Convention No. 155** (Bahrain, Bosnia and Herzegovina, Cabo Verde, Cuba, Mexico, Portugal); **Convention No. 161** (Bosnia and Herzegovina, Brazil, Chile); **Convention No. 162** (Bosnia and Herzegovina, Canada, Colombia, Portugal); **Convention No. 167** (Albania, Brazil); **Convention No. 170** (Colombia, Germany); **Convention No. 174** (Armenia, Bosnia and Herzegovina, Colombia, Estonia); **Convention No. 176** (Albania, Armenia, Belgium, Bosnia and Herzegovina, Brazil, Germany); **Convention No. 184** (Bosnia and Herzegovina); **Convention No. 187** (Albania, Bosnia and Herzegovina, Chile, Cuba, Germany).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 13** (Algeria); **Convention No. 45** (Azerbaijan, Lebanon, Tajikistan, Uganda); **Convention No. 115** (Hungary); **Convention No. 119** (Algeria, Cyprus); **Convention No. 148** (Germany); **Convention No. 187** (Austria).

## Social security

### Central African Republic

#### **Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1964)**

*Articles 1 and 2 of the Convention. List of recognized occupational diseases.* With reference to its previous comments, the Committee once again notes with **concern** that the list of occupational diseases envisaged in section 91 of the Social Security Code of 2006 and section 81 of Decree No. 09-116 of 27 April 2009, on the application of the Social Security Code, has still not been adopted by the Ministers responsible for social security and public health. The Government indicates in this regard that in 2013 a national delegation participated in the work of the technical committee responsible for finalizing the harmonized list of occupational diseases at the Inter-African Conference on Social Insurance (CIPRES) and that the committee responsible for preparing the list has taken up its work once again. The recurrent crises experienced by the country in recent years have however prevented the Government from finalizing the process of the preparation of the list of occupational diseases. The Committee wishes to emphasize that, without a list of occupational diseases, it is impossible to implement not only compensation, but also the prevention of such diseases. **The Committee therefore once again expresses the hope that the technical committee responsible for the adoption of the list of occupational diseases will be in a position to complete its work in the very near future and that the Ministries concerned will be able to adopt the schedules of occupational diseases envisaged in the Social Security Code and Decree No. 09-116, taking duly into consideration the Schedule annexed to the Convention.** In this regard, the Committee draws the Government's attention to the List of Occupational Diseases Recommendation, 2002 (No. 194), which contains the most up-to-date list of occupational diseases at the international level.

*Recommendations of the Standards Review Mechanism.* The Committee notes that, according to the recommendations made by the Tripartite Working Group of the Standards Review Mechanism, as approved by the ILO Governing Body, member States which have ratified the Convention are encouraged to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI, as the most up-to-date instruments in this subject area (GB.328/LILS/2/1). The Committee reminds the Government of the possibility of having recourse to ILO technical assistance in this regard.

#### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1964)**

The Committee recalls that, following the adoption of Act No. 06-035 of 28 December 2006 issuing the Social Security Code, Decree No. 09-116 of 27 April 2009 implementing that Act, and Decree No. 09-115 of 27 April 2009 determining the legal and institutional status of the National Social Security Fund, the national law and regulations continue to be based on the principle that equality of treatment is subject, contrary to *Article 4(1) of the Convention*, to the condition of the residence of foreign nationals in the national territory. The provision of benefits abroad is only possible if it is provided for by a bilateral or multilateral social security agreement, which is contrary to the provisions of *Article 5(1) of the Convention*. In the Central African Republic, this provision of the Convention requires the provision of old-age benefit and employment injury pensions, without other conditions, to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of these benefits.

The Committee notes that the Government, in its report, does not indicate any measures adopted or envisaged with a view to amending the national legislation to bring it into conformity with these provisions of the Convention. In light of the information available, the Committee concludes once again that the national legislation continues not to give full effect to the essential provisions of the Convention. **The Committee expects that the Government will take the necessary measures to make appropriate amendments to the legislation so as to give full effect to the Convention.**

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

### Egypt

#### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1993)**

With reference to its previous observation, the Committee notes the Government's statement that the Ministry of Social Solidarity has been informed of the issues raised therein and will take these into account when drafting the new social insurance law which is intended to replace the 2010 legislation on pensions. **The Committee reiterates the hope that, in the context of this reform, the Government will take the necessary measures with a view to giving effect to the following provisions of the Convention to which it has been drawing the Government's attention since the Convention was ratified.**

The Committee notes with *regret* that the Government's report does not contain any reply to the previous comments which read as follows:

*Article 3 of the Convention. Equality of treatment.* According to section 2(2) of the Social Insurance Act (No. 79 of 1979), the provisions of this Act apply to foreign nationals on condition that the duration of their contract is not less than one year, and that there is a reciprocity agreement between their country of origin and Egypt, subject to non violating the provisions of conventions ratified by Egypt. The Government states nevertheless that the nationals of countries which have ratified Convention No. 118, enjoy insurance benefits provided under the Social Insurance Act regardless of the duration of their contracts or the existence of the reciprocity agreement. The same statement is made by the Government in its report of 2007 on Convention No. 19. The Committee takes due note of these statements and understands that the Convention has a higher rank in the national legal system than the law. The Committee notes that the Government has not supplied any documentary evidence requested by the Committee proving that the above interpretation given by the Government is applied in practice by the social security institutions. The Committee also recalls that in its previous reports on the application of Conventions Nos 19 and 118 the Government has been consistently making the opposite statement that foreign nationals could enjoy social insurance benefits subject to the duration of their contract being not less than one year. ***In this situation and in order to dissipate any doubts as to the fact that the requirements of the Convention overrule the abovementioned limitations contained in the Social Insurance Act, the Committee asks the Government to instruct the responsible social security institutions in the country to disregard the duration of contract and reciprocity agreement requirements under section 2(2) of the Social Insurance Act with respect to the nationals of 37 countries which have also ratified Convention No. 118, and for the accident compensation benefits, with respect to the nationals of 120 countries which have also ratified Convention No. 19.***

*Article 5. Payment of benefits abroad.* Referring to the issues raised in the Committee's previous comments, the Government indicates that beneficiaries residing abroad are classified by country of residence. Insurance and pension benefits are regularly transferred each month without any financial burden on beneficiaries in cases where bilateral agreements have been concluded with the country of residence of the beneficiary. This has so far been the case with Cyprus, Greece, Netherlands, Sudan and Tunisia and the Government is willing to conclude further such agreements. In the absence of bilateral agreement, beneficiaries need to justify pension entitlements with the Egyptian embassies or consulates at their place of residence in order to have their pensions paid to their bank accounts inside Egypt. They may afterwards transfer their pensions to their countries of residence through the international banking system.

While it takes due note of this information, the Committee once again stresses that with respect to its own nationals and nationals of any other Member that has accepted the Convention's obligations for the branches in question, *Article 5* obliges the ratifying States to export benefits abroad even in the absence of any bilateral social security agreements with the country of nationality or the country of residence of the beneficiary concerned and to take unilateral measures to this effect. By placing the obligation to transfer benefits abroad on the State, *Article 5* of the Convention specifically seeks to prevent situations where beneficiaries would have to make their own individual arrangements for the transfer of their entitlements abroad at their own expense. By ratifying the Convention, the Government has undertaken to ensure that the responsible social insurance institutions shall deliver the abovementioned benefits to the new place of residence of the beneficiary outside Egypt and shall bear the cost of such transfer. For this purpose, appropriate banking arrangements shall be put in place with the help of the National Bank, if need be, and use shall be made of the administrative assistance of the countries concerned, which they have to afford to Egypt free of charge under *Article 11* of the Convention. The Committee observes that, in the absence of any bilateral agreement, the lack of practical methods for pensions transfer outside of Egypt often leads beneficiaries in practice to apply for lump sums (in accordance with sections 27 and 28 of the Social Insurance Act), which is contrary to the letter and the very purpose of the Convention, even when this is done at the request of the beneficiary. ***The Committee therefore once again urges the Government to institute an effective system for the transfer of Egyptian social security benefits abroad by taking appropriate measures either unilaterally or within the framework of bilateral and multilateral social security agreements with the countries with the highest number of pension beneficiaries. The Committee reminds the Government of the availability of technical assistance concerning the existing international legal frameworks for the maintenance of the acquired rights and rights in the course of acquisition mentioned in Articles 7 and 8 of the Convention.***

*Article 10. Coverage of refugees and stateless persons.* Referring to the Committee's previous comments, the Government states that Palestinian and South Sudanese refugees are treated on an equal basis with Egyptian nationals with respect to social security. ***The Committee understands that all refugees and stateless persons other than the ones mentioned above also benefit from the provisions of the Convention without any condition of reciprocity and asks the Government to confirm such understanding.***

## Malaysia

### Peninsular Malaysia

***Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)***  
(ratification: 1957)

### Sarawak

***Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)***  
(ratification: 1964)

### ***Follow-up to the conclusions of the Committee on the Application of Standards*** ***(International Labour Conference, 106th Session, June 2017)***

The Committee notes with *concern* that the Government's detailed report has not been received in spite of an express request to this effect and the discussion on the application of the Convention in Peninsular Malaysia and Sarawak

by the Committee on the Application of Standards (CAS) of the International Labour Conference (ILC) in June 2017. The Committee recalls that the CAS discussion was based on the long-standing comments made by the Committee of Experts urging the Government to take the necessary measures with a view to re-establishing, both in law and in practice, the principle of equal treatment between foreign and national workers in case of employment injury. In these successive comments, the Committee has continuously recalled that, since 1 April 1993, the national legislation provided for foreign workers, employed in Malaysia for up to five years, to be transferred from the Employees' Social Security Scheme (ESS), which provided for periodical payments to victims of industrial accidents, to the Workmen's Compensation Scheme (WCS), which guaranteed only a lump-sum payment of a significantly lower amount. The Committee also recalls that, in June 2011, the CAS had already urged the Government to take immediate steps in order to bring national law and practice into conformity with *Article 1 of the Convention*, to respect the system of automatic reciprocity instituted by the Convention between the ratifying countries, and to avail itself of the technical assistance of the ILO to resolve administrative difficulties by concluding special arrangements with labour-supplying countries in accordance with *Articles 1(2) and 4* of the Convention. In reply, the Government had indicated that a technical committee within the Ministry of Human Resources, including all stakeholders, was considering the various options with a view to bringing the national legislation in line with the requirements of the Convention.

The Committee notes that, at the 2017 session of the ILC, the CAS once again called upon the Government to take immediate, pragmatic and effective steps to ensure that the Convention's requirement for equal treatment of migrant workers and national workers was met and to expedite its efforts to this effect, as the need for real progress is becoming increasingly urgent. Specifically, the CAS called upon the Government to, without delay: (i) take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers; (ii) take immediate steps to conclude its work on the means of reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the ESS to migrant workers in a form that is effective; (iii) work with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury; (iv) adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad; (v) take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury without fear of arrest and retaliation; and (vi) avail itself of the technical assistance of the ILO with a view to implementing these recommendations and to develop mechanisms for overcoming the practical issues affecting implementation of the domestic social security scheme to migrant workers.

*In view of the urgency of the persistent situation where foreign workers employed in Malaysia for up to five years who become victims of industrial injuries, are denied their fundamental right to equality of treatment with national workers and thus deprived of, inter alia, lifelong pensions in case of permanent disability, the Committee fully endorses the CAS conclusions and urges the Government to conform with its international obligations by taking the required measures in an effective and expeditious manner.*

## Suriname

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1976)

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1976)**

*Article 2 of Convention No. 42. List of occupational diseases.* For many years, the Committee has been requesting the Government to include the "loading and unloading or transport of merchandise" among the activities likely to cause anthrax infection in the list of occupational diseases established by section 25 of the Industrial Accidents Act (IAA), in accordance with Convention No. 42. Since 2006, the Government has been indicating that the IAA and other national Occupational Safety and Health (OSH)-related laws are under revision. The Committee notes that, in its report, the Government indicates that a new commission has been put in place to examine the said revision, including the inclusion of anthrax infections due to loading and unloading of transport and merchandise. The commission was expected to produce a first draft of the new legislation by March 2017. ***The Committee requests the Government to indicate whether the said changes to the list of occupational diseases have been included in the draft provisions produced by this commission and to provide a copy of the draft. It also requests the Government to report on any new steps taken in the review process. Noting the Government's indication that it is willing to avail itself of ILO technical assistance during the review process, the Committee firmly hopes that, with the assistance of the Office, the Government will be able to report progress made in giving effect to the Convention.***

*Article 7 of Convention No. 17. Additional compensation for the constant help of another person.* For many years, the Committee has been pointing to the fact that no measures have been taken to include provisions on additional compensation, in cases where an accident incapacitates a worker in a way that he or she needs the constant help of another person, in line with *Article 7* of Convention No. 17. The Committee notes the Government's indication that still no concrete actions have been taken in this regard, but that the issue is being considered as part of the abovementioned

ongoing review process of the OSH-related legislation. *The Committee requests the Government to indicate whether provisions on additional compensation for the constant help of another person have been included in the draft prepared by the new commission so as to ensure conformity with the provisions of the Convention and to provide information on any new developments in this regard.*

*Conclusions and recommendations of the Standards Review Mechanism.* The Committee notes that, at its 328th session in October 2016, the Governing Body of the ILO adopted the conclusions and recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG), recalling that Conventions Nos 17 and 42 to which Suriname is party are outdated and charging the Office with follow-up work aimed at encouraging States party only to these Conventions to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI, as these represent the most up-to-date instruments in this subject area. The Committee also reminds the Government of the availability of ILO technical assistance in this regard.

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1976)

*Articles 4, 5 and 7 of the Convention. Equality of treatment of workers living abroad.* Referring to its long-standing comments regarding the need to amend section 6(8) of the Industrial Accidents Act (IAA), which, contrary to the Convention, restricts payment of employment injury pensions to beneficiaries residing abroad, the Committee notes the Government's indication that a Committee charged with reforming the legislation on occupational safety and health (OSH) will also attempt amending the IAA in order to bring it into conformity with the Convention. As regards in particular the payment of certain benefits in case of residence abroad guaranteed by *Article 5* of the Convention, the Government indicates that it is currently reviewing the practical implementation of this provision as making the benefits payable abroad is rendered difficult by the high cost of monthly bank transfers.

The Committee wishes to point out in this respect that *Articles 4* and *5* of the Convention guarantee the payment of, inter alia, employment injury benefits to nationals and foreign workers from countries which also accepted the obligations of the Convention as regards employment injury benefits who reside abroad. The Committee further observes that, for the purpose of giving effect to the obligations derived from the Convention, *Article 7(1)* thereof requires the Members' party to the Convention to endeavour to participate in schemes for the maintenance of the acquired rights and rights in course of acquisition. Such agreements may also stipulate the financial arrangements for the payment of benefits to beneficiaries residing on the territory of each of the contracting parties. *The Committee therefore requests the Government to indicate whether provisions on the payment of employment injury benefits to workers protected under the Convention and living abroad have been included in the draft prepared by the new OSH commission. The Committee firmly hopes that the ongoing review process will, in the near future, lead to a change of the national legislation and practice concerning the payment of benefits to workers living abroad including by way of concluding agreements with countries in its region, who equally ratified the Convention and accepted its Part (g), such as Brazil, Ecuador, Mexico, Uruguay or the Bolivarian Republic of Venezuela, to facilitate the payment of benefits to these countries, including through the conclusion of bilateral agreements as the case may be.*

## **Sweden**

### **Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) (ratification: 1990)**

*Article 10(3) of the Convention. Part-time work.* In its previous comments, the Committee referred to observations received from the Swedish Confederation for Professional Employees (TCO) and the Swedish Confederation of Professional Associations (SACO) criticizing the reform of 2008, which reduced the entitlement to unemployment benefits for unemployed persons who agreed to work part time, to 75 days, while continuing to grant fully unemployed persons 300 days of benefits. The Committee asked the Government to reconsider the reform in the light of the social rationale of the Convention and its objective to promote employment, including part-time, by means of social security benefits. The Committee notes that the Government indicates that it is aware of the importance of providing support for part-time workers who seek full-time employment in this respect. The Committee notes with *satisfaction*, from the 50th annual report on the application by Sweden of the European Code of Social Security, that, from 15 May 2017, the provisions about part-time work have been changed: a person who performs or declares part-time work will, from this date on, be paid unemployment benefit for a total maximum of 60 weeks in a benefit period.

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

## **Direct requests**

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 12** (*Burundi, Madagascar*); **Convention No. 17** (*Burundi, Central African Republic, Uganda*); **Convention No. 18** (*Tunisia*); **Convention No. 19** (*Mali, Suriname, Trinidad and Tobago*); **Convention No. 42** (*Burundi, Suriname*);

**Convention No. 102** (*Czech Republic, Denmark, France, Germany, Luxembourg, Netherlands, Sweden, Switzerland*); **Convention No. 118** (*Central African Republic, Denmark*); **Convention No. 121** (*Germany, Netherlands, Sweden*); **Convention No. 128** (*Czech Republic, Germany, Netherlands, Sweden, Switzerland*); **Convention No. 130** (*Czech Republic, Denmark, Germany, Netherlands, Sweden*); **Convention No. 168** (*Sweden*).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 17** (*Cuba*).

## ***Social policy***

### **Direct requests**

A request regarding certain matters is being addressed directly to **Convention No. 117** (*Malta*).

## Migrant workers

### Albania

#### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 2006)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Article 1 of the Convention. Protection of basic human rights. Freedom of association.* The Committee recalls that section 5(4) of the Law on Foreigners (Law No. 9959 of 17 July 2008) recognized the right to organize of foreign nationals subject to obtaining a residence permit. The Committee had therefore requested the Government to take the required measures, where necessary through an amendment to the legislation, to ensure that all workers, including foreign workers without a residence permit, could exercise trade union rights, and particularly the right to join organizations which defend their interests as workers, in conformity with *Article 1* of the Convention. The Committee notes that the new Law on Foreigners (Law No. 108 of 28 March 2013), which repeals the Law No. 9959 of 2008, no longer contains the abovementioned provision. However, the Committee notes that whereas section 70 of the new Law on Foreigners provides that foreign workers with a permanent residence permit shall enjoy economic and social rights on the same terms as Albanian nationals, the Law contains no other provisions relating to the right to organize of foreign nationals. In this context, the Committee also refers the Government to its comments on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). **Recalling the provisions of the Constitution of Albania concerning fundamental rights and freedoms (Article 16(1)), the right to organize collectively (Article 46(1)) and the right of employees to unite freely in labour organizations (Article 50), the Committee requests the Government to confirm that all foreign workers, whether with a permanent or temporary residence permit or without a residence permit, can exercise trade union rights, and particularly the right to join organizations which defend their interests as workers in conformity with Article 1 of the Convention.**

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

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

### Barbados

#### **Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1967)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

*Articles 7 and 9 of the Convention. Free services and assistance and transfer of remittances.* In its previous comments, the Committee considered that the requirement for migrant workers participating in the Canada–Caribbean Seasonal Agricultural Workers Programme “the Farm Labour Programme” – to remit 25 per cent of their earnings to the Government directly from Canada as mandatory savings, 5 per cent of which was retained to pay the administrative costs of the Programme, could be contrary to the spirit of *Article 9* of the Convention. The Committee had also taken note of the concerns expressed by the Congress of Trade Unions and Staff Associations of Barbados that this requirement, together with the immediate deduction of certain costs such as airfares, pension and medical contributions from the workers' pay, created hardship for the workers, and the Programme needed to be reviewed. The Committee also drew the Government's attention to the fact that charging workers for purely administrative costs of recruitment, introduction and placement is prohibited under the Convention (General Survey of 1999 on migrant workers, paragraph 170).

The Committee notes the Government's indication that arrangements are made for a percentage of the earnings of the workers on overseas programmes to be remitted back to the country for them to access upon return and that workers travelling on the overseas programmes are required to sign an “agreement” (contract of employment) which allows for the deduction of 20 per cent of their wages to cover administration costs and national insurance contributions. According to the Government, upon arrival in Canada the workers are met by the Barbados liaison officers and in Barbados the employment services to migrants are rendered free of charge by the National Employment Bureau, which oversees the preparation and departure of workers. The Committee notes that the “Agreement for the Employment in Canada of Commonwealth Caribbean Seasonal Agricultural Workers – 2013” provides that the worker agrees that the employer shall remit to the government agent 25 per cent of the worker's wages for each payroll period and that “a specified percentage of the 25 per cent remittance to the government agent shall be retained by the Government to defray administrative costs associated with the delivery of the programme” (section IV, paragraphs 1 and 3). The worker also agrees to pay to the employer part of the transportation costs and the employer, on behalf of the worker, will advance the work permit fees and be reimbursed by the government agent (section VII, paragraphs 3–4). **The Committee requests the Government to clarify why it is considered necessary to require migrant workers under the Farm Labour Programme to remit 25 per cent of their wages to the liaison service for mandatory savings, including for administrative costs, and to indicate whether the liaison service has a role in the recruitment, introduction and placement of migrant workers and whether any of the administrative costs retained by the liaison service relate to recruitment, introduction or placement. The Committee also requests the Government to take the necessary measures to ensure that migrants for employment are permitted to transfer their earnings or such part of their earnings and savings as they desire, and to provide information on any steps taken, in cooperation with the workers' and employers' organizations, to review the impact of the Farm Labour Programme on the situation of Barbadian migrant workers.**

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

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

## France

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1954)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

*Article 3 of the Convention. Measures to combat misleading propaganda regarding immigration.* In its previous comments, the Committee requested the Government to provide information on the measures taken, in cooperation with the social partners and, where appropriate, other relevant stakeholders, to prevent and combat prejudices regarding immigration and the stigmatization and stereotyping of migrant workers, including the Roma population, in an effective manner, and to provide information on the results achieved. The Committee notes the general nature of the Government's reply in its report, in which it reiterates its previous indications that the measures to combat misleading propaganda include legislative and practical measures to combat racism and xenophobia and measures against the trafficking of women. It also notes the Government's indication that there is strict equality of treatment between migrant workers and national employed persons. The Committee recalls that, under the terms of *Article 3*, each Member for which the Convention is in force undertakes to take all appropriate steps against misleading propaganda relating to emigration and immigration. These measures must not only concern misleading information targeting migrant workers, but also the national population, such as targeted measures to combat social and cultural prejudices which aggravate discrimination against migrants (see the 2016 General Survey on migrant workers). **The Committee once again requests the Government to indicate in detail the measures adopted, in cooperation with the social partners and, where appropriate, other relevant stakeholders, to prevent and combat prejudices in an effective manner regarding emigration and immigration and the stigmatization and stereotyping of migrant workers, which have an effect in practice on the effective application of the principle of equal treatment, and to provide information on the results achieved.**

*Article 6. Equality of treatment.* The Committee notes the main elements of Government policy on labour migration which, in the view of the Government, is targeted as a priority at international enterprises and skilled workers, and workers with a high potential to respond to the needs of the labour market and the structural needs of enterprises faced with an internationalized labour market, while at the same time protecting employed persons who are already in France. **Noting that Article 6 does not distinguish between the treatment of different categories of migrant workers and that, in practice, migrant workers who are already on the national territory are mainly engaged in low paid sectors with difficult working conditions (principally cleaning, catering, security and construction), the Committee reiterates its request to the Government to provide full information on the relevant legal provisions applying no less favourable treatment to migrant workers than that which applies to nationals with respect to the matters enumerated in Article 6(1)(a) to (d) of the Convention, with an indication of any differences that may exist between the various categories of immigrant workers ("employee", "employee on assignment", "European Blue Card", "skills and talent", "scientific", "temporary worker", and "seasonal worker"). The Committee also requests information on the application in practice of this provision and requests the Government to include information on any complaints made to the competent authorities, such as the labour inspectorate, but also the Rights Ombud and the courts, or any other competent body, by migrant workers who consider that they are victims of discrimination in employment with a view to the application of the national legislation relating to the Convention.**

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

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

## Israel

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1953)

*Article 6 of the Convention. Equality of treatment (foreign caregivers).* The Committee recalls its previous observation regarding the exclusion of live-in caregivers from the applicability of the Hours of Work and Rest Law 1951, and the concerns raised that a discriminatory and inferior legal regime would be applied to women migrant workers. It also recalls the heavy dependence of the care sector on the work of live-in foreign caregivers, and the importance, in the context of proposed reforms regarding the nursing sector, to ensure proper working conditions and effective and accessible complaints mechanisms and means of redress to foreign caregivers in line with *Article 6(1)(a)–(d)* of the Convention. The Committee notes from the Government's report that 49,156 workers (or 58 per cent of all foreign workers) were employed in the nursing sector in 2016 and that at least 80 per cent of them were women. The Committee also notes that foreign caregivers continue to be required to reside in the homes of their employers and that live-out arrangements or part-time employment are prohibited (Foreign Workers' Handbook, updated in 2017). The Committee previously noted that the 63,000 female Israeli care workers in the long-term caregiving sector were mostly employed in part-time jobs through nursing care companies. No comparable data are provided on the number of Israeli workers in the long-term caregiving sector in 2016. Regarding measures to improve the situation of foreign caregivers, the Committee refers to its observation on the Equal Remuneration Convention, 1951 (No. 100), in which it notes the Government's intention to adopt a gradual approach towards the implementation of recommendations made to the Ministry of Economy to improve the situation of foreign caregivers, which related, among others, to amendments of the legislation and a comprehensive wage. The Committee notes the Government's reply that the collective agreements which have been adopted in the past few years have established a minimum wage, far higher than the statutory minimum wage, which has had an impact on migrants' income. Therefore, the rise in the minimum wage should be considered an appropriate compensation for those foreign live-in caregivers who have no possibility to have compensation for overtime. The Government also states that in most cases workers in the sector do not work more than a regular working day. Recalling

the heavy dependence of the care sector on the work of live-in foreign caregivers, the Committee wishes to draw the Government's attention to the close correlation between the quality of the working and living conditions of the care providers and the quality and continuity of the care provided, in particular in the case of long-term care. **Considering that the caregiving sector is the largest sector in which foreign workers are employed and taking due note of the Government's intention to find an appropriate solution towards improving their situation, the Committee refers to its comments on Convention No. 100 and asks the Government to continue its efforts, in consultation with workers' and employers' organizations, to ensure that the proposed legislative framework guaranteeing adequate pay and favourable working conditions for caregivers is in accordance with the provisions of Article 6 of the Convention. The Committee asks the Government to provide detailed information on the progress made and on any obstacles encountered in this regard.**

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

## Italy

### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1981)**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

The Committee notes the communication from the Italian Union of Labour (UIL), the Italian General Confederation of Labour (CGIL) and the Italian Confederation of Workers' Trade Unions (CISL) dated 2 October 2012 and the Government's reply thereto.

*Part I. Articles 2–7 of the Convention. Addressing migration in abusive conditions. Multilateral and bilateral cooperation.* Over the past five years, the Committee has been referring to the serious vulnerability of migrant workers in an irregular situation to violations of their basic human and labour rights. The Committee notes with deep sadness the recent events that took place in Italian territorial waters, near the island of Lampedusa, which led to the death of more than 300 migrant workers. The Committee and the Conference Committee have previously acknowledged the particular challenges faced by Italy in addressing the significant increase in immigration flows and in protecting the basic human rights of migrant workers. They have also recognized that the phenomenon of irregular migration is a complex and global issue, and in the case of Italy of a particularly European nature. The Committee further notes that in their observations, the UIL, CGIL and CISL emphasize the need for more effective and cohesive European governance. The Committee draws the Government's attention to the Declaration of the United Nations High-level Dialogue on International Migration and Development adopted on 1 October 2013 which recognizes the need for international cooperation to address, in a holistic and comprehensive manner, the challenges of irregular migration to ensure safe, orderly and regular migration, with full respect for human rights as well as the need to strengthen synergies between international migration and development at the global, regional and national levels. The Declaration also reaffirms the need to promote and protect effectively the human rights and fundamental freedoms of all migrant workers regardless of their migration status (see A/68/L.5, 1 October 2013, paragraphs 5, 6 and 10). **While recognizing the broader dimension of this phenomenon and the Government's efforts to find solutions to address migration in abusive conditions, particularly in this time of crisis, the Committee requests the Government to continue to take all necessary measures to promote national (through cooperation with workers' and employers' organizations), bilateral, multilateral and regional cooperation to address the issue of irregular migration with full respect of migrant workers' human rights and to prosecute and punish those organizing and assisting in clandestine movements of migrants. Please provide information on any developments in this regard as well as on all the measures adopted at national level to ensure respect, in law and in practice, of the human rights of all migrant workers.**

*Articles 1 and 9. Minimum standards of protection. Access to justice.* The Committee notes that as a result of routine inspection work by local and regional labour directorates in 2011, in the agriculture, construction, industry and other sectors, more than 2,000 workers in an irregular situation were detected. The Committee further notes that section 1(1)(b) of Legislative Decree No. 109/2012 provides for a six month residence permit on humanitarian grounds for those third country nationals who in cases of "particularly exploitative working conditions", lodge complaints or cooperate in criminal proceedings against employers, at the initiative or with the favourable opinion of the courts. This residence permit may be renewed for one year or the maximum period needed to complete the criminal proceedings. The Government indicates that the irregular situation of migrant workers does not deprive them of their rights in terms of pay, contributions and the provisions in force on working hours and health and safety in the workplace as well as on the principle of non-discrimination. The Committee notes however that the UIL, CGIL and CISL indicate that trade unions have no access to either the Initial Reception Centre or the Asylum Seekers Reception Centre where migrants in an irregular situation are detained which prevents them from assisting and providing information to migrant workers. In this regard, the Committee emphasizes once again that access to justice, including adequate access to assistance and advice, is a basic human right which must be guaranteed to all migrant workers in law and in practice. The Committee highlights in this respect the importance of providing for effective and speedy legal procedures. **The Committee requests the Government to indicate the specific scope of the term "particularly exploitative working conditions" provided for in article 1(1)(b) of Legislative Decree No. 109/2012 and to provide information on how it is ensured in practice that all migrant workers in an irregular situation can seek redress from the courts with respect to violation of their rights arising out of past employment including non-payment or under-payment of wages, social security and other benefits. In order to assess the effectiveness of the mechanisms in place, the Committee once again requests the Government to provide data disaggregated by sex and origin on the number of migrant workers in an irregular situation that have filed administrative or judicial claims with respect to violations of their basic human rights or rights arising out of past employment. The Committee further requests the Government to provide information on the manner in which adequate legal defence for migrant workers in an irregular situation is ensured, including in detention centres. Please also continue to provide information on inspections carried out in the construction and agriculture as well as other sectors to detect illegal employment of migrants and the results achieved.**

*Part II. Articles 10 and 12. National policy on equality of opportunity and treatment of migrant workers lawfully in the country.* The Committee previously took note of the adoption by the Government of the Plan on Integration in Safety – Identity

and Dialogue and requested information on its implementation. The Committee notes that the Government refers to the integration agreements as a new practical instrument under the Plan and indicates that they are still at the launch stage and therefore cannot yet be evaluated. The one-stop-shops for immigration play an important role in the promotion and support services for the training courses that foreign nationals undertake to attend under the integration agreements. The Government further refers to the activities and projects carried out in the framework of the multi-annual programme for the period 2007–13 put in place by the Central Directorate for Immigration and Asylum Policy of the Ministry of Interior following wide-ranging consultation of the institutional stakeholders. The Committee observes, however, that no information is provided on the concrete impact and results of the annual programmes that have already been in place since 2007. The Government also provides information on a range of measures aimed at promoting the integration of migrant workers and raising awareness about migration issues. The Committee notes in particular: the “Migrant Integration Portal” which offers a multitude of services to migrant workers, through a public–private network engaged in integration measures; a handbook on “Immigration: How, when, where – the handbook for integration” designed for those that have not yet arrived in Italy; a campaign for music, sports and integration, as well as the Co.In project, intended to help migrant workers to become integrated and Italian society to become aware of the mutual rewards of integration. Measures have also been taken to improve the approach of the media to immigration, including the drafting of a handbook on migration and the mass media and the organization of seminars. The Committee notes, however, that according to UIL, CGIL and CISL, migrant workers continue to be concentrated in the lowest income range (27.5 per cent of Italian and 55.9 of migrant workers) and are the most affected by unemployment. The Committee notes that this is confirmed by the third annual report on migrant workers in the Italian labour market from the Ministry of Labour and Social Policies, according to which the remuneration gap between national and migrant workers has increased considerably in the past years. *The Committee asks the Government to continue to provide information on developments with respect to the national policy on equality of opportunity and treatment of migrant workers, including cooperation with employers’ and workers’ organizations. The Committee also requests the Government to indicate the impact of the action taken to implement the national policy including the multi-annual programme 2007–13, and any obstacles encountered. Please provide specific information on the measures adopted to address the remuneration gap between national and migrant workers, particularly in sectors where the gap is the highest.*

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

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

## Kenya

### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1979)**

The Committee notes that the Government’s report contains no reply to its previous comments. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2012.

*Articles 10, 12 and 14(a) of the Convention. National policy on equality of opportunity and treatment, and free choice of employment.* For a number of years, the Committee has addressed the issue of the existing policy of “Kenyanization” of employment which was considered by the Committee as contrary to the principle established by the Convention of equality of opportunity and treatment between national and foreign workers provided that foreign workers are residing lawfully in the country of employment. The Committee notes with *interest* that section 5 of the Employment Act 2007 provides that the Minister, labour officers and the Industrial Court shall promote and guarantee equality of opportunity for a person who is a migrant worker or a member of his or her family lawfully within Kenya. Section 5 also prohibits direct and indirect discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status, with respect to recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of employment. Besides, it establishes that an employer shall pay his or her employees equal remuneration for work of equal value. The Committee further notes the adoption of the National Gender and Equality Commission Act, 2011 and the Citizens and Foreign Nationals Management Service Act, 2011. *The Committee requests the Government to indicate the manner in which section 5 of the Employment Act 2007 is applied in practice, namely how it is translated into a national policy designed to promote and to guarantee equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights and individual and collective freedoms for persons who, as migrant workers or as members of their families are lawfully within its territory, as provided in Articles 10 and 12(a)–(g) of the Convention. Please provide information on the functioning of and the measures adopted on these issues by the National Gender and Equality Commission and the Citizens and Foreign Nationals Management Service.*

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

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

## Malaysia

### Sabah

### **Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1964)**

*Article 6 of the Convention. Equal treatment. Minimum wages and the foreign worker levy.* The Committee recalls its previous comments in which it noted that the National Wages Consultative Council Act 2011 (Act 732) and the Minimum Wages Order 2012 provided for a regional monthly minimum wage for Sabah covering national and foreign workers, but exclude domestic workers from their application. It also recalls that an annual foreign worker levy in the plantation sector, agricultural and fishing sector, manufacturing sector, construction sector, and in the services sector, and

for domestic workers, is to be paid to the Immigration Department. The Government also indicated that, as of 1 January 2014, all employers employing foreign workers should pay the minimum wage and would be allowed to deduct the foreign worker levy and the cost of accommodation from migrant workers' wages, but not from the minimum wage. As the Government had indicated in the past that the levy was paid by the employer and could not be deducted from the wages of the foreign worker, the Committee considered that ambiguity existed regarding the foreign worker levy and permissible deductions from minimum wages of foreign workers, since the establishment of the regional minimum wage for Sabah.

The Committee notes that the Government's report has not been received. It notes however that the Government provided information in 2016 confirming the Malaysian government policy requiring the levy to be borne by the foreign worker. The Government however indicates that pursuant to section 113(4) of the Sabah Labour Ordinance (Cap 67), no deductions of levy and accommodation costs are allowed, except at the request in writing of the employee and with prior permission by the competent authority. The Government adds that when approving such requests, the wish of the foreign worker to pay the levy in instalments or by way of a lump sum, is being taken into account; not allowing the deduction of the levy from wages of foreign employees, despite their written request, would only burden these employees. While noting these explanations, the Committee remains concerned that, in practice, employers may still deduct the amount of the levy from the minimum wage of the foreign worker, which would result in less favourable treatment of these workers with nationals, contrary to *Article 6(1)(a)* of the Convention. Noting further that the Government had previously reported that the levy was meant to help defray the costs of maintenance of the facilities and infrastructure used by foreign workers during their stay in the country, the Committee considers that, especially when levy rates are high, imposing the burden of the levy on the foreign worker would not be equitable and could have a negative impact on the wages and general working conditions and rights of migrant workers. Regarding deductions for costs of accommodation, the Committee notes the Government's explanations that such deductions will not be allowed if it is agreed that the employer has the obligation to provide free accommodation to the employees. ***The Committee asks the Government to clarify the reasons for laying the burden of maintenance costs of facilities and infrastructure, through payment of an annual levy, with the foreign worker, and to indicate whether any consideration is being given to shift the burden of the foreign worker levy onto the employer, or to examine alternative ways to compensate for the so-called costs for facilities and infrastructure generated by foreign workers during their stay. The Committee also asks the Government to specify the applicable legal provisions or policy prohibiting levy deductions from the minimum wage, and to indicate the measures taken to ensure that, in practice, employers do not deduct the levy amount from the minimum wages paid to foreign workers. Recalling that the Government had previously indicated that it was willing to examine the impact of the levy system on the working conditions and equal treatment of migrant workers, including wages, the Committee requests the Government to undertake such an assessment and provide information on its results and any follow-up given to it.***

*Article 6(1)(b) of the Convention. Equality of treatment with respect to social security. Employment injury benefits.* The Committee notes that the Government's report was not received despite the Committee's longstanding comments regarding differences in treatment between nationals and temporary foreign workers with respect to payment of social security benefits in the case of industrial injuries. The differences relate to the Workmen's Compensation Scheme (WCS), which guarantees to foreign workers employed in the country for up to five years only a lump-sum payment of a significantly lower amount than the periodical payments to victims of industrial injuries provided under the Employees' Social Security Scheme (ESS), while Malaysian nationals and foreign workers permanently residing in Malaysia (Sabah) continue to be covered by the ESS. The Government had previously indicated that it was looking into various options, with the participation of all stakeholders with a view to bringing the national legislation in line with the requirements of the Convention. The Committee recalls that it has been raising this same issue since 1993 in the context of its comments under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), with respect to Peninsular Malaysia and Sarawak. The Committee refers the Government to its observation on Convention No. 19 which notes the discussion on the application of that Convention in Peninsular Malaysia and Sarawak by the Conference Committee on the Application of Standards (CAS) in June 2017. The Committee notes that the CAS once again called upon the Government to take immediate, pragmatic and effective steps to ensure that the Convention's requirement of equal treatment of migrant workers and national workers was met and to expedite its efforts to this effect, as the need for progress was becoming increasingly urgent. ***The Committee urges the Government to take into account its comments on the application in Peninsular Malaysia and Sarawak of Convention No. 19 when addressing the issue of equal treatment between migrant workers and nationals with respect to industrial injuries in Sabah.***

*Other social security benefits.* With respect to other social security benefits, including medical care, old-age, invalidity and survivor's pensions, as well as sickness and maternity benefits, the Committee notes that the Government has not provided any further information in this respect. ***Taking into account the large number of foreign workers concerned, the Committee urges the Government to provide information on the steps taken, including the conclusion of bilateral or multilateral agreements, to ensure that migrant workers do not receive treatment which is less favourable than that applied to nationals or foreign workers permanently residing in the country with respect to all social security benefits.***

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

## Nigeria

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1960)

*Article 1 of the Convention. Information on national laws and policies.* The Committee notes with *interest* the National Policy on Labour Migration 2014, which was developed in consultation with the social partners and other stakeholders, and with the assistance of the ILO and the International Organization for Migration (IOM). It notes that the Policy aims to establish an effective, responsive and dynamic labour migration governance system in Nigeria. It notes the overall objectives of the Policy relating to good governance, the protection and welfare of migrant workers, and the promotion of employment and development benefits of migration. Specific objectives of the Policy include, among other things: to enact a legislative framework as a foundation of labour migration governance; ensure a gender responsive policy at all levels; to promote the right to decent work, including social protection; to ensure non-discrimination and equality of all workers, migrants and nationals, abroad and at home; to promote and protect rights of migrant workers in recruitment for employment abroad through supervision and monitoring of recruitment agencies; and to link migration and employment policy and practice. The Committee also notes the detailed action plan for the implementation of the National Policy which includes activities, inter alia, to initiate action to ratify the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); to harmonize legislation with international and regional standards; to review guidelines and procedures for recruitment abroad; to establish an Advisory Board on Labour Migration which would include the social partners; to review national law and administrative regulations to ensure that non-discrimination and equality are expressly provided for; and to review national labour law and regulations to ensure that migrant workers are covered. **The Committee requests the Government to provide detailed information on the measures taken and results achieved under the Action Plan to implement the National Policy on Labour Migration 2014.**

*Articles 2, 4 and 7. Information and assistance services to migrant workers.* The Committee notes from the document on the National Policy on Labour Migration 2014, that migrants are often poorly or misinformed about conditions governing entry and work, residence and skills required, as well as their rights and obligations in the countries of destination. The Committee notes that the Action Plan to implement the National Policy on Labour Migration includes activities to conduct awareness raising and pre-departure training programmes for potential migrant workers. The Government also indicates it has established two Migrant Resource Centres in Lagos and Abuja, which provide free information to nationals who intend to migrate and referral services to returning migrants. **The Committee asks the Government to provide more detailed information on the type of services being provided for outgoing and returning migrant workers. Noting that already in 2006, Nigeria counted 600,000 foreigners, the Committee also requests the Government to indicate the measures taken to maintain adequate and free services to assist foreign workers, and to provide them with accurate information.**

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

## Bolivarian Republic of Venezuela

### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** (ratification: 1983)

*Articles 10 and 12(d) of the Convention. Equality of opportunity and treatment.* In response to the request the Committee has been making for several years to reform or repeal the legal provisions which limit access to employment for foreign workers, the Government indicates in its report that the provisions contained in the National Constitution and the Organic Act concerning labour and men and women workers (LOTTT) guarantee equality of opportunity and prohibit discrimination relating to access and conditions of work based on nationality. The Committee recalls that, while having legislation in place to combat discrimination is important, it is not sufficient to guarantee equality of opportunity and treatment in practice. It is necessary to take proactive measures to guarantee the application and observance of the principle of non-discrimination. Furthermore, the Committee recalls that *Article 12(d)* stipulates that any statutory provisions should be repealed and any administrative instructions or practices modified which are inconsistent with the national policy. Sections 27 (percentage of Venezuelan staff), 28 (temporary exceptions), 29 (hiring of foreign workers) and 231 (limit on foreign agricultural workers) of the LOTTT restrict the hiring of foreign workers by providing that national workers must represent 90 per cent of the total staff, apart from the specific exceptions listed, and that foreign workers cannot receive more than 20 per cent of the total payments made to all staff. The Committee notes with *regret* that, despite the amount of time that has passed and the many requests made, the Government has not amended the provisions in question. **The Committee once again urges the Government to take the necessary steps to amend or repeal sections 27, 28, 29 and 231 of the Organic Act concerning labour and male and women workers to bring the legislation into full conformity with the principle of equality of opportunity and treatment regarding employment of migrant workers in relation to national workers.**

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 97** (*Albania, Algeria, Bahamas, Barbados, Belize, Cuba, Dominica, France, Grenada, Guyana, Israel, Italy, Jamaica, Kenya, Kyrgyzstan, Madagascar, Malawi, Malaysia: Sabah, Nigeria, Tajikistan, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Bolivarian Republic of Venezuela*); **Convention No. 143** (*Albania, Italy, Kenya, San Marino, Slovenia, Tajikistan, The former Yugoslav Republic of Macedonia, Uganda, Bolivarian Republic of Venezuela*).

## Seafarers

### Dominica

#### **Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)** (ratification: 1983)

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2011.

The Committee notes the Government's indication that a special Tripartite Committee has been appointed to advise the Government on all matters relating to legislation and institutional changes necessary for the ratification of the Maritime Labour Convention, 2006 (MLC, 2006). It also notes that a National Action Plan has been prepared in order to formulate recommendations to the Government on matters of maritime laws and administration.

*Articles 2 and 3 of the Convention. Medical examination of young seafarers.* The Committee has been drawing the Government's attention to the need to adopt specific laws or regulations to regulate the medical examination of young seafarers, especially since the Employment of Women, Young Persons and Children Act permits young persons on board ships already from the age of 14 and also in view of the fact that Dominica has a sizeable fleet under its flag. In a previous report, the Government indicates that regrettably no progress has been made on this matter other than that the Industrial Relations Advisory Committee is planning to examine the question of the medical examination of young seafarers with a view to modifying the legislation and complying with the requirements of the Convention. The Committee recalls that the employment of any young person under 18 years of age on any vessel should be conditional on the production of a medical certificate delivered by a medical practitioner and also that the continued employment at sea of any such young person should be subject to the repetition of such medical examination at intervals of not more than one year. *Noting that the Government has indicated in earlier reports its preparedness to update its laws to give full effect to the provisions of the Convention, the Committee requests the Government to keep the Office informed of any progress made in this regard.*

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

#### **Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)** (ratification: 2004)

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

*Article 2 of the Convention. Implementing legislation.* The Committee notes the Government's indication that a special Tripartite Committee has been appointed to advise the Government on all matters relating to legislation and institutional changes necessary for the ratification of the Maritime Labour Convention, 2006 (MLC, 2006). It also notes that a National Action Plan has been prepared in order to formulate recommendations to the Government on matters of maritime laws and administration. While welcoming the Government's active steps towards the ratification of the MLC, 2006, the Committee is bound to observe that the Government's first report on the application of Convention No. 147 does not contain any information on the laws or regulations and other measures giving effect to the specific requirements of the latter Convention. *The Committee therefore requests the Government to indicate in detail how each of the Articles of the Convention is applied in national law and practice, and explain in particular in what manner the provisions of the International Maritime Act, 2002, and of the Dominica Maritime Regulations, 2002, are substantially equivalent to the Conventions mentioned in the Appendix of the Convention relating to safety standards, social security measures and shipboard conditions of employment and shipboard living arrangements, as required under Article 2 of the Convention.*

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

### Saint Lucia

#### **Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)** (ratification: 1980)

The Committee notes with *concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments made in 2011.

*Article 1(1) of the Convention. Definition of the term "seafarer".* The Committee notes that section 2 of the Shipping Act 1994 (Cap.13:27), as last amended in 2001, excludes masters from the definition of the term "seaman". In this connection, the Committee recalls that this Article of the Convention defines the term "seamen" to include "all persons employed on any vessel engaged in maritime navigation". It is therefore of the view that this provision of the Shipping Act is not in conformity with the Convention, and that the indemnity provided for under the national legislation should be made available to all crew members employed on board vessels regardless of their position or grade, thus including masters. *The Committee requests the Government to take the necessary action without further delay in order to bring the Shipping Act in line with the Convention in this respect.*

*Article 1(2). Definition of the term "vessel".* The Committee notes that section 3(1) of the Shipping Act excludes from its scope of application government ships operated for non-commercial purposes. In this connection, it recalls that this Article of the Convention defines the term "vessel" to include all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned, and permits only the exception of warships. *The Committee therefore requests the Government to take appropriate steps in order to align its legislation with the requirements of the Convention as regards the scope of application of the unemployment indemnity in case of shipwreck.*

*Article 2. Payment of unemployment indemnity.* Further to its previous comments, the Committee observes that section 154(1) of the Shipping Act provides that, in the event of wreck, or loss of the ship, proof that the seafarer has not exerted himself

or herself to the utmost to save the ship, cargo and stores shall bar his or her claim for wages. *As such a condition is not authorized or contemplated by the Convention, the Committee is bound to once more ask the Government to take measures in the very near future in order to amend this provision of the Shipping Act.*

*The Committee notes that a number of provisions of the Shipping Act 1994 (Cap. 13:27) have been amended by the Shipping (Amendment) Act, No. 14 of 2016. It notes, however, that no amendments have been made to the abovementioned provisions and that, therefore, an opportunity has been missed to bring the Act in conformity with the Convention as repeatedly requested by the Committee.*

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 8** (Dominica, Iraq, United Kingdom: Jersey, United Kingdom: Montserrat); **Convention No. 16** (Solomon Islands); **Convention No. 22** (Iraq, United Kingdom: Jersey); **Convention No. 23** (Iraq); **Convention No. 68** (Guinea-Bissau); **Convention No. 69** (Angola, Guinea-Bissau); **Convention No. 73** (Angola, Guinea-Bissau); **Convention No. 74** (Angola, Guinea-Bissau, United Kingdom: Jersey); **Convention No. 91** (Guinea-Bissau); **Convention No. 92** (Iraq, Republic of Moldova); **Convention No. 108** (Angola, Canada, Guinea-Bissau, Liberia, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands); **Convention No. 146** (Iraq); **Convention No. 147** (Iraq); **Convention No. 166** (Guyana); **Convention No. 185** (Marshall Islands); **Convention No. 186** (Bahamas, Canada, Croatia, Fiji, Kiribati, Republic of Korea, Luxembourg, Malaysia, Marshall Islands, Mauritius, Panama, Samoa, Seychelles, Tuvalu, United Kingdom, United Kingdom: Gibraltar, Viet Nam).

## Fishers

### Azerbaijan

#### **Medical Examination (Fishermen) Convention, 1959 (No. 113)**

(ratification: 1992)

#### **Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)**

(ratification: 1992)

The Committee notes the reports sent on the application of the fishing Conventions ratified by the country. In order to provide a comprehensive view of the issues to be addressed in relation to the application of these Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

#### **Medical Examination (Fishermen) Convention, 1959 (No. 113)**

*Article 4(1) of the Convention. Period of validity of medical certificates.* The Committee notes the Government's statement that the frequency of in-service examinations depends on which follow-up category the subject is placed into: healthy, once every three years; practically healthy, annually; and with a chronic or compensated disease, on a case-by-case basis. While noting this information, the Committee recalls that the Convention provides that for young fishers the medical certificate shall remain in force for a period not exceeding one year. **Accordingly, the Committee requests the Government to indicate the measures taken or envisaged in order to comply fully with the requirements of this Article of the Convention.** The Committee further notes that the Government provided a list of the main laws and regulations governing medical examinations of fishers for the purpose of determining their fitness for work in Azerbaijan's fishing industry. Among those, the Committee notes the following: Decision of the Ministry of Health of Azerbaijan on Improving Compulsory Medical Examinations (No. 46 of 13 December 2012) and the Rules for Performing Compulsory Medical Examinations approved by Decision No. 24/2 of the Ministry of Health of Azerbaijan dated 15 May 2014. **The Committee requests the Government to provide copies of the abovementioned instruments and to indicate the legal provisions related to the implementation of the Convention.**

*Article 5. Independent examination by a medical referee.* The Committee had requested the Government to specify the legal provisions ensuring the fisher's right to a further examination by a medical referee if refused a certificate. The Committee notes the Government's statement that, in the event of a dispute over the result of a medical examination, the head doctor sets up an ad hoc panel within the medical institution in question, which decides whether the individual is physically fit for work on board a vessel, and that its decision is final. **Taking note of this information, the Committee requests the Government to provide copies of the relevant legal provisions.**

#### **Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)**

*Articles 3–17 of the Convention. Implementing legislation on crew accommodation requirements.* The Committee had requested the Government to provide detailed information on the legislative or administrative provisions implementing Parts II, III and IV of the Convention, in order to be in a position to evaluate conformity of the national legislation with the requirements of the Convention.

Regarding the implementation of Part II (*Articles 4 and 5*), the Committee notes the Government's reference to the Regulations on the Rules for Ship Inspection, approved by the Cabinet of Ministers which provides for an initial inspection of crew accommodation requirements of vessels before their registration. The Committee further notes that according to the Government the performance of these inspections, which also take place during the re-registration process of ships, have been delegated to classification societies. The Committee notes, however, that the abovementioned Regulations do not seem to provide inspections when the crew accommodation of a vessel has been substantially altered or reconstructed, as required by *Article 5* of the Convention. **The Committee requests the Government to indicate how it gives effect to this requirement of the Convention.**

Regarding Part III (*Articles 6–16*), the Committee notes the Government's statement that, in accordance with article 148(2) of the Constitution, "international agreements to which the Republic of Azerbaijan is a party are an integral part of the law of the Republic of Azerbaijan", and that "[a]ll of the ILO Conventions ratified by Azerbaijan have the force of national law and are an integral part of labour law". The Committee recalls, however, that *Article 3(1)* of the Convention prescribes that each Member for which this Convention is in force undertakes to maintain in force laws or regulations which ensure the application of the provisions of Parts II, III and IV of this Convention. The Committee recalls that even if the Convention is considered as an integral part of the law of Azerbaijan, this would not be enough to give effect to the provisions of the Convention that are not self-executing. This is the case, for example, of *Article 6(9)* which requires that the competent authority shall decide to what extent fire prevention or fire retarding measures shall be required to be taken in the construction of the accommodation; and of *Article 8(4)* which provides that the competent authority shall prescribe the standard concerning the heating system for the crew accommodation. In addition, according to *Article 3(2)(e)*, the laws or regulations shall require the competent authority to consult periodically the fishing-vessel owners' and fishers' organizations, where such exist, in regard to the framing of regulations, and to collaborate so far as practicable with such

parties in the administration thereof. *In view of the above, the Committee requests the Government to provide full particulars on the manner in which all the detailed accommodation standards included in Part III of the Convention are implemented in law and practice.*

Regarding Part IV (*Article 17*), the Committee takes note of the Government's statement that the national law does not contain any requirements for modifications to be made in vessels in the various cases covered by *Article 17* of the Convention and especially *paragraph 2(a)* and *(b)*, in respect of vessel re-registration. *The Committee takes note of this information.*

## Liberia

### **Minimum Age (Fishermen) Convention, 1959 (No. 112)** (ratification: 1960)

### **Medical Examination (Fishermen) Convention, 1959 (No. 113)** (ratification: 1960)

### **Fishermen's Articles of Agreement Convention, 1959 (No. 114)** (ratification: 1960)

The Committee notes that in its reports sent on the application of a number of fishing Conventions the Government indicates that the Liberian Maritime Law, RLM-107 (hereinafter the "Maritime Law") and the Liberian Maritime Regulations, RLM-108 (hereinafter the "Regulations") were amended in 2013 addressing the Committee's previous comments on the application of the Conventions, without providing any further information. *Recalling that for more than 20 years the Government has been requested to provide information on the applicability of existing legislation to fishers and noting that it is not clear from the Government's response whether there are adequate provisions in the amended texts to cover fishers, the Committee requests the Government once again to clarify this issue.*

In order to provide a comprehensive view of the issues to be addressed in relation to the application of the fishing Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

#### **Minimum Age (Fishermen) Convention, 1959 (No. 112)**

*Article 1 of the Convention. Scope of application. Minimum age.* The Committee notes that section 326(2) of the Maritime Law states that "persons under the age of 16 shall not be employed or work on Liberian vessels registered under this Title, except on vessels upon which only members of the same family are employed, school ships or training ships". The Committee recalls that according to *Article 2* of the Convention, children under the age of 15 years shall not be employed or work on fishing vessels. The Committee also recalls that the exclusion of vessels upon which only members of the same family are employed is not provided for under the Convention. The Committee further notes that according to section 290 of the Maritime Law, its Chapter 10 – which deals with merchant seamen and minimum age – only applies to persons engaged on board vessels of at least 75 net tons. Moreover, section 326 of the same chapter, fixing the minimum age at sea, only applies to vessels registered under the Maritime Law. In this connection, section 51 limits the registration procedure to specific vessels, namely: (a) vessels of at least 20 net tons, owned by a citizen or national of Liberia and engaged solely in coastwise trade between ports of the country or between those of Liberia and other West African countries; and (b) seagoing vessels of more than 500 net tons engaged in foreign trade, owned by a citizen or national of Liberia. The Committee recalls that pursuant to *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the only exception of fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation. *The Committee requests the Government to clarify whether Chapter 10 of the Maritime Law applies to fishers. If that is the case, recalling that the Convention applies to all fishing vessels irrespective of tonnage or of the fact that only members of the same family are employed, the Committee requests the Government to adopt the necessary measures without delay in order to give full effect to the Convention. If that is not the case, the Committee requests the Government to indicate the national provisions giving effect to the requirements of the Convention.*

#### **Medical Examination (Fishermen) Convention, 1959 (No. 113)**

*Application of the Convention.* The Committee had previously requested the Government to provide clarifications on the applicable legislation to fishers with regard to medical certification. The Committee had noted the information provided by the Government that existing legislation only applied to fishing vessels of 500 tons or more. Recalling that the Convention applies to all fishing vessels irrespective of tonnage, the Committee had requested the Government to adopt the necessary measures to ensure that fishers employed on board fishing vessels of less than 500 tons are subject to the same medical certification requirements in accordance with the provision of the Convention. The Committee *regrets* to note that the Government has not provided a reply to its previous observation. *The Committee therefore once again requests the Government to adopt without delay the necessary measures to give full effect to the provisions of the Convention.*

### **Fishermen's Articles of Agreement Convention, 1959 (No. 114)**

*Application of the Convention.* In its previous comments, the Committee had requested the Government to explain how effect is given to the provisions of the Convention and to provide clarifications on the application of the existing legislation to fishing vessels. The Committee *regrets* to note that the Government provides no information in this regard. **The Committee therefore once again requests the Government to adopt the necessary measures without delay to give full effect to the provisions of the Convention.**

*[The Government is asked to reply in full to the present comments in 2019.]*

## **Mauritania**

### **Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1963)**

The Committee notes the adoption on 15 October 2013 of Act No. 2013-029 issuing the Merchant Marine Code.

*Article 3(1) of the Convention. Examination of agreement before signing.* In its previous comments, noting that the Merchant Marine Code contained no provisions allowing for fishers to examine the articles of agreement before they are signed, the Committee asked the Government to indicate how it ensures observance of this provision of the Convention. The Committee notes with *interest* that section 394(2) of the new Merchant Marine Code gives full effect to this provision of the Convention, by providing that “The agreement shall be signed by the seafarer before the departure of the vessel in conditions in which he has the opportunity to examine the terms and conditions and is able, where necessary, to seek advice and accept them freely before signing them.”

*Article 5. Record of employment.* The Committee previously requested the Government to indicate how the keeping of employment records is organized and how the records are made available to fishers. The Committee notes in this respect that section 404 of the new Merchant Marine Code establishes that, upon discharge, the shipowner or the master shall provide the seafarer with a certificate of service. The Committee also notes that section 45 of the Maritime Labour Collective Agreement 2006 provides that any seafarer may demand upon discharge a certificate of work from the master or shipowner indicating exclusively the name and address of the employer and the nature of the employment or, where appropriate, the successive jobs occupied by the seafarer. **The Committee takes note of this information.**

*Article 6(3). Particulars to be contained in the agreement.* The Committee previously requested the Government to indicate which legislative provisions give effect to this provision of the Convention, namely regarding the inclusion of the following particulars in the fisher's articles of agreement: (a) the surname and other names of the fisher, the date of his birth or his age, and his birthplace; (b) the place at which and date on which the agreement was completed; (c) the name of the fishing vessel or vessels on board which the fisher undertakes to serve; (d) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement; and (e) the amount of his wages, or the amount of his share and the method of calculating such share. The Committee notes that the new Merchant Marine Code does not set out a list of particulars to be contained in the agreement. **The Committee therefore invites the Government to indicate the measures adopted or envisaged to give effect to this provision of the Convention.**

*Article 11. Immediate discharge.* The Committee previously requested the Government to indicate the provisions of the law or regulations which determine the circumstances in which the fisher can request immediate discharge. The Committee notes in this respect that section 399 of the new Merchant Marine Code lists the circumstances in which the fisher can terminate the maritime employment agreement without notice. **The Committee takes note of this information.**

## **Sierra Leone**

### **Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1967)**

The Committee notes with *deep concern* that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2005.

*Articles 3–15 of the Convention. Certificates of competency.* The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. **The Committee asks the Government to provide detailed information on any concrete progress made in respect of the adoption of national laws implementing the Convention.** The Committee understands that the Office remains ready to offer expert advice and to respond favourably to any specific request for technical assistance in this regard. **Finally, the Committee requests the Government to supply up-to-date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet and the approximate number of fishers gainfully employed in the sector.**

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

## Trinidad and Tobago

### **Fishermen's Competency Certificates Convention, 1966 (No. 125)** (ratification: 1972)

*Implementing legislation on fishers' competency certificates.* The Committee had noted in its previous comment the absence of laws and regulations giving effect to the requirements of the Convention and had requested the Government to provide a copy of the Safety of Fishing Vessel Regulations which was under preparation. The Committee *regrets* to note the Government's indication in its report that the regulations governing all aspects of fishing vessel operations, including fishers' certificates of competency, are still being developed by the Ministry of Works and Transport. *The Committee therefore urges the Government to adopt the relevant laws and regulations without delay to give full effect to the requirements of the Convention, in particular those regarding fishers' minimum age to obtain certificates of competency, professional experience and examinations.*

*[The Government is asked to reply in full to the present comments in 2019.]*

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 113** (Bulgaria, Uruguay); **Convention No. 114** (Cyprus, Slovenia, United Kingdom: Guernsey); **Convention No. 125** (Belgium, France: French Polynesia, Germany); **Convention No. 126** (France: French Polynesia, Greece, Sierra Leone).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 113** (Poland).

## Dockworkers

### Italy

#### **Dock Work Convention, 1973 (No. 137) (ratification: 1981)**

*Articles 2 and 5 of the Convention. National policy to encourage permanent or regular employment for dockworkers. Cooperation between the social partners to improve the efficiency of work in ports.* The Committee notes with **satisfaction** the Government's comprehensive detailed report, which contains information on the implementation of Legislative Decree No. 81 of 15 June 2015, as well as a copy of the national collective agreement (CCNL) on dock work currently in force for 2016–18. Through Decree No. 81/2015, the Government revised the national framework regulating employment contracts. With respect to dockworkers, the Government reiterates its previous comments that most dockworkers are employed by authorized port companies and hold employment contracts of indefinite duration. It adds that this does not exclude the possibility of engaging dockworkers on other types of employment contracts provided for by Decree No. 81/2015, which include: (i) temporary agency work contracts (sections 30–40); (ii) part-time work (sections 4–12); (iii) fixed-term contracts (sections 19–29); and (iv) apprenticeships (sections 41–47). The Government indicates that the employment relationship and type of contract according to professional category are regulated by the CCNL. It adds that representative organizations of employers and workers were involved during the negotiation of the CCNL, noting that the dock work sector has a longstanding tradition of active involvement by the social partners at the national and local levels. The Committee notes that, pursuant to section 15 of Act No. 84 of 28 January 1994, as amended, the social partners are also members of the commission responsible for the organization of dock work and other relevant tasks. In order to secure the greatest social advantage of new methods of cargo handling, the Government indicates that, in accordance with section 29 of Act No. 164 of 11 November 2014, a Strategic National Plan of Dock Work and Logistics (Piano Strategico Nazionale della Portualità e della Logistica) was launched in 2015. The Strategic Plan seeks to promote the intermodal transport system and is expected to support the economic recovery of the country. The Committee notes that the Plan also established a committee for each port authority (composed of representatives of the public authorities, employers and workers) with socio-economic consultant functions. **The Committee requests the Government to continue to supply up-to-date information on the numbers of dockworkers, disaggregated by sex, age and type of contract, and on variations in their numbers during the reporting period. The Committee would also welcome receiving information regarding the results achieved in implementing the Strategic National Plan of Dock Work and Logistics and the measures taken to promote cooperation between the social partners to improve the efficiency of work in ports (Article 5).**

### Norway

#### **Dock Work Convention, 1973 (No. 137) (ratification: 1974)**

The Committee notes the observations of the Confederation of Norwegian Enterprises (NHO) and the Norwegian Confederation of Trade Unions (LO), communicated with the Government's report.

*Article 3 of the Convention. Registered dockworkers.* In its 2015 comments, the Committee took note of the Government's indication that there were several cases pending in Norwegian courts on various aspects of the collective agreements through which the Convention is implemented in the country, whose outcome might affect the manner in which the number of dockworkers is determined. The Government added that, once the pending cases were resolved, it might then be appropriate to engage in a dialogue with the social partners with the intent of finding a method of determining the number of dockworkers that would be acceptable to both parties, and would enable the Government to provide the Committee with comprehensive information on the implementation of the Convention. The Committee therefore requested the Government to provide copies of relevant court decisions and information on the manner in which the Convention is applied. The Government recalls in its report that the Convention's requirements are implemented through collective agreements between the NHO and the LO. It adds that the Supreme Court of Norway took under consideration a case involving one such collective agreement. The Committee notes the Supreme Court's decision of 16 December 2016 in Case No. HR-2016-2554-P, *Holship Norge AS v. Norwegian Transport Workers' Union (NTF)*, a copy of which was communicated with the Government's report. The Committee notes that the LO intervened in the appeal as a third-party intervener for the benefit of the NTF, and the NHO and the Norwegian Business Association intervened as third-party interveners on behalf of the appellant, Holship. The Supreme Court examined the issue of the lawfulness of a notified boycott against Holship, a Danish enterprise, by the NTF, to prevent Holship employees from loading and unloading ships landing at the Port of Drammen. The boycott was intended to force Holship to enter into a collective agreement with the NTF (the Framework Agreement) containing a priority of engagement clause, which would reserve loading and unloading work for dockworkers associated with the Administration Office of the Port of Drammen. According to the Framework Agreement, administration office stevedores handle loading and unloading operations for all port users in the Port of Drammen. The Administration Office has six permanent stevedores, however, additional personnel may be hired when needed, and there are between 50 and 90 additional workers associated with the Administration Office. The Supreme Court concluded that the dockworkers' priority of engagement constitutes an

unlawful restriction on Holship's freedom of establishment under Article 31 of the Agreement on the European Economic Area (the EEA Agreement). The Supreme Court observed that the principle of priority of engagement was originally established to improve the situation of dockworkers, and the priority of engagement clause is anchored in *Article 3* of Convention No. 137. The Court also referred to *Article 2* of the Convention, observing that the purpose of the Convention seemed to be establishing orderly working and payment conditions for dockworkers. In reaching its conclusions, the Court held that these considerations could be fulfilled by means other than granting priority of engagement for loading and unloading work to one group of workers. In its observations, the LO indicates that the Norwegian courts have handed down several judgments ruling on the validity of the priority of engagement clause reserving loading and unloading for registered dockworkers in private docks and dock facilities. As a consequence, the priority of engagement clause is not being applied in some ports where it was previously applied. The loading and unloading in these ports has been taken over by employees of the enterprises located in these ports, by workers these enterprises employ temporarily, and by the ships' crew, at the expense of registered dockworkers. The LO is of the view that the practice in these ports is incompatible with Norway's obligations under the Convention. In its observations, the NHO indicates that there have been questions raised about who is responsible for the implementation of the Convention in Norway, affirming that this is the sole responsibility of the Norwegian State. The NHO further indicates that the Convention is not incorporated by law or regulation in Norway. Referring to its May 2014 observations, the NHO reiterates that the Norwegian understanding of dock work has been incorrectly restricted to loading and unloading operations and considers that measures should be taken to ensure that the Convention is given proper coverage in Norway. The Government points out that the parties to the case are engaged in dialogue following the Court's decision, considering the need for changes to the way dock work is organized and possible changes to the collective agreements. The Government is awaiting the result of these negotiations. ***The Committee requests the Government to provide more detailed information on the issues raised by the social partners, as well as on the outcome of the dialogue process, including any changes to the manner in which dock work is organized in the country.***

*Application of the Convention in practice. The Committee requests the Government to provide a general appreciation in its next report on the manner in which the Convention is applied in the country, including for instance extracts from reports, particulars of the numbers of dockworkers and of variations in their numbers over time.*

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 137** (*Afghanistan, Australia, Cuba, Egypt, Finland, France, Kenya, Mauritius, Nigeria, Poland, Romania, Sweden, United Republic of Tanzania, Uruguay*).

## Indigenous and tribal peoples

### Paraguay

#### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1993)**

*Articles 2, 6 and 33 of the Convention.* 1. *Prior consultation.* In its previous comments, the Committee noted Decision No. 2039/2010 establishing the requirement to seek the intervention of the Paraguayan Indigenous Institute (INDI) in all consultation processes with indigenous communities, with the guidelines for each consultation process to be established on a case-by-case basis. The Committee noted the concern expressed by the International Organisation of Employers (IOE) at the negative consequences for business that may arise from the failure to comply with the obligation of consultation. The Committee also observed that the representatives of the indigenous peoples highlighted irregularities that violated the right to consultation and to free, informed and prior consent recognized by the Convention, and that in August 2014 they formally communicated to the National Congress their disagreement with the Bill on indigenous peoples' right to prior consultation which the Ombudsman's Office had submitted to the legislature. They considered that the indigenous organizations had not been consulted in this respect and so they called for the Bill to be shelved.

The Committee notes that the Government indicates in its report that the Bill submitted to the legislature in 2013 had been rejected by the Commission on Indigenous Affairs of the Chamber of Deputies. The Government's report includes information from the INDI to the effect that a draft decree establishing a protocol governing a process of consultation and consent vis-à-vis the indigenous peoples of Paraguay is at the approval stage before the executive authority. The draft decree is the result of a joint initiative conducted with over 30 indigenous organizations and was discussed and approved at two workshops on consultation and free, informed and prior consent, organized with the indigenous organizations by the INDI and the Federation for the Self-determination of Indigenous Peoples. The Government indicates that once the decree is adopted, the INDI will continue to advise the public authorities and the legislature on the establishment of specific consultation procedures for certain national projects, such as the Hydrocarbons Bill or the Sanitation and Drinking Water Programme for Chaco and medium-sized towns in the Eastern Region of Paraguay.

The Committee observes in this regard that the United Nations Special Rapporteur on the rights of indigenous peoples, in her 2015 report, stated that there was widespread failure by the Government in Paraguay to fulfil its duty of consultation prior to the adoption of legislative, political and administrative measures which directly affect indigenous peoples and their lands, territories and natural resources (A/HRC/34/48/Add.2).

***The Committee trusts that all necessary steps will be taken as soon as possible to ensure the adoption of the decree establishing the protocol governing a process of consultation and consent vis-à-vis indigenous peoples so as to ensure that the peoples concerned are consulted through appropriate procedures whenever legislative or administrative measures are planned which may affect them directly. In the meantime, the Committee requests the Government to provide information on the specific consultation processes undertaken regarding draft legislation or administrative measures likely to affect indigenous peoples, indicating those in which the INDI has supplied advice.***

2. *Coordinated and systematic action.* The Committee noted the functions assigned to the INDI, which is responsible for coordinating action on indigenous rights and ensuring their observance. The INDI acts as the interface between the indigenous peoples and the other public institutions responsible for administering programmes for them. The Committee observes that, according to information on the website of the Technical Secretariat for Economic and Social Development Planning, an international forum was organized in August 2017 for the exchange of experiences with regard to the formulation of a national plan for indigenous peoples. The aim is to set up a dialogue forum for participation in the formulation of the plan as a distinctive public policy agreed upon by the indigenous peoples. At the forum, the indigenous organizations indicated that they would continue to monitor this process in the regions where indigenous communities are located, while the public institutions undertook to manage the funds needed to organize forums of this kind. ***The Committee trusts that the national plan for indigenous peoples will be adopted in the near future and requests the Government to indicate the manner in which its implementation will contribute to coordinated and systematic action designed to protect the rights of indigenous peoples. The Committee also requests the Government to provide information on the dissemination and consultation process carried out in this respect. Furthermore, observing that, according to the website of the Ministry of Public Finance, the budget for the INDI was reduced in 2015 and 2016, the Committee hopes that the Government will assign all the necessary financial and human resources to enable the INDI to duly discharge its functions, in accordance with Article 33(1) of the Convention.***

*Part II. Article 14. Lands.* With regard to the previous comments on progress made regarding the regularization of lands traditionally occupied by indigenous peoples, the INDI indicates that its main function continues to be to secure the legal status of indigenous territories. Hence, between 2010 and 2014, title was granted with respect to 283,996 hectares of land. Titles of ownership were granted in the departments of San Pedro, Caaguazú and Alto Paraguay, for a total of 59,465 hectares in 2013. Ownership titles were granted in respect of 73,360 hectares in various departments in 2014. According to the INDI, out of 493 indigenous communities, 357 (72.4 per cent) have land that is secured and 343 of these (96.1 per cent) hold a title of communal ownership. Moreover, as regards the implementation of the rulings of the Inter-American Court of Human Rights referred to by the Committee in its previous comments, the Committee welcomes the

adoption of Act No. 5194 of 12 June 2014 expropriating two ranches in the department of Chaco (14,403 hectares) in the public interest and entrusting them to the INDI for subsequent assignment to the Sawhoyamaxa indigenous community of the Enxet people. In addition, as regards the Yakye Axa indigenous community, the deed relating to the purchase of their alternative lands is undergoing registration in the public records. However, in the case of the Xákmok Kásek indigenous community, the State is still in discussions with the private owners of the ranches being reclaimed.

***The Committee encourages the Government to continue making every effort to guarantee the protection of the rights of ownership and possession of indigenous peoples, and trusts that the Government will provide information in its next report indicating visible progress regarding the regularization of lands that indigenous peoples have traditionally occupied and the grant of title to them. The Committee also requests the Government to provide information on the expropriation measures being examined by the legislature and on the judicial proceedings connected with land possession in which the INDI has acted as an intermediary.***

*Article 15. Natural resources. Forestry undertakings.* In its previous comments, the Committee noted the concern expressed by the Authentic Single Confederation of Workers (CUT-A) regarding environmental and forestry management in relation to lands assigned to indigenous communities and regarding the occupation of indigenous community lands by landless rural people (*campesinos sin tierra*). In this regard, the Government indicates that the INDI, aware of the environmental problems affecting indigenous peoples, established the Department for Socio-Environmental Matters in 2015, whose mandate is to oversee projects affecting indigenous communities and reduce their environmental impact. Accordingly, complaints have been lodged with various prosecution services regarding cases of deforestation, indiscriminate logging and changes in land use, and these have resulted in important precedents being set. The Government indicates that a legal and administrative framework is also being established to promote indigenous communities' access to payment for environmental services, adapting existing requirements to the communities' legal and cultural reality and making them more flexible. The Specialized Environmental Prosecution Unit (UFEDA) has been established to deal with offences against the environment and look after diverse community interests, including matters that affect the interests of indigenous peoples. The Committee notes these measures, the purpose of which is to strengthen indigenous peoples' capacity to defend their rights and interests and file complaints in the event of violations. In this regard, the Committee recalls that the Convention provides that the indigenous peoples concerned shall be consulted before any programmes for the exploration or exploitation of the resources pertaining to their lands are undertaken or permitted. ***While noting the measures adopted, the Committee requests the Government to provide detailed information on specific examples of the manner in which the rights of indigenous peoples to participate in the use, management and conservation of the natural resources pertaining to their lands has been safeguarded. The Committee also requests the Government to send information on the assessments of the social and environmental impact that may result from the exploitation of natural resources on the territories of indigenous peoples.***

*Part III. Article 20. Recruitment and conditions of employment.* In its previous comments, the Committee encouraged the Government to continue taking steps to eliminate situations of forced labour and discrimination affecting the members of certain indigenous peoples, especially in the Chaco region, and asked it to provide information on activities undertaken in this field by the public authorities established in the region, such as the Regional Labour Directorate in Chaco. In this regard, the Government indicates that in 2015 the Ministry of Labour recruited 30 new labour inspectors. The Directorate for Inspections conducted inspections in the Chaco region in the second half of 2015 as part of an investigation into possible situations of forced labour, though no specific cases of forced labour were identified. The Committee welcomes the adoption in November 2016 of the National Strategy for the Prevention of Forced Labour 2016–20 (Decree No. 6285/16). It observes that a series of consultation workshops were held with social actors, representatives of public institutions and indigenous communities in order to gather inputs to formulate a strategy. The Committee observes that the Ministry of Labour website indicates that a combined inspection and police unit operating in Chaco, headed by the Anti-Trafficking Unit at the Public Prosecutor's Office, found indigenous workers from the Ache community in a situation of forced labour in a workplace in the department of Boquerón. It also observes that the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, in her statement of 24 July 2017 at the end of her mission to Paraguay, indicated that she had received many reports of forced and bonded labour in the Chaco region. She stated in her report that she did not believe that "forced or bonded labour takes place across all or even the majority of employers. ... However, information received suggests that there are instances of, and vulnerability to, forced and bonded labour within some labour sites and a lack of regulation amongst smaller employers."

***The Committee encourages the Government to continue making every possible effort to ensure that the National Strategy for the Prevention of Forced Labour is actually implemented in practice, particularly in the regions where evidence of forced labour involving indigenous communities has been found. The Committee requests the Government to indicate the measures taken to continue strengthening the presence of the State in these regions (the labour inspectorate's technical unit for the prevention and elimination of forced labour, the subcommittee of the Committee on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region, and the office of the Directorate of Labour in Teniente Irala Fernández) with a view to raising the awareness of vulnerable communities regarding the risk of forced labour, identifying and protecting the victims and the persons at risk. The Committee also refers to its comments on the application of the Forced Labour Convention, 1930 (No. 29).***

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

## Peru

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1994)**

The Committee notes the communication received in March 2017, through which the General Confederation of Workers of Peru (CGTP) communicated a comparative regional report of the Coordination of Indigenous Organizations of the Amazon Basin (COICAI). It also notes the observations of the Autonomous Workers' Confederation of Peru (CATP), received in November 2015, and the Government's comments in that respect of February 2017. It further notes that on 4 September 2015 the CGTP communicated the Alternative Report 2015 on compliance with the Convention prepared by seven national indigenous organizations with the support of the Indigenous Peoples Working Group of the National Coordinating Committee for Human Rights.

### **Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)**

The Committee notes the report of the tripartite committee set up to examine the representation made under article 24 of the Constitution of the ILO by the International Trade Union Confederation (ITUC), the Trade Union Confederation of the Americas (TUCA) and the Autonomous Workers' Confederation of Peru (CATP) alleging non-observance by the Government of Peru of the Convention, which was approved by the Governing Body in June 2016.

*Article 3 of the Convention. Human rights and fundamental freedoms.* In its previous comments, with reference to the events that occurred in 2009 in the city of Bagua, the Committee emphasized the need to take measures to ensure that no force or coercion is used in violation of the human rights and fundamental freedoms of indigenous peoples. The Committee notes that in the representation examined in June 2016, the tripartite committee examined the information provided by the complainant organizations concerning the high levels of conflictuality and the criminalization of social protest, as well as the information provided by the Government on the various incidents. The tripartite committee deplored the murders and acts of violence reported in the representation and, while noting that investigations had been initiated, requested the Government to provide to the Committee of Experts detailed information on the specific progress made in each of the investigations into the deaths and incidents referred to by the complainant organizations in relation to the indigenous social protest between 2011 and 2014. The tripartite committee also deeply regretted the murder of four leaders of the Alto Tamaya – Saweto indigenous community on 1 September 2014 and observed that such acts require severe measures by the authorities. The Committee also notes that the Alternative Report 2015 criticizes campaigns which endeavour to tie claims and protests to subversive movements and expresses concern at the abuse of force.

In the same way as the tripartite committee, the Committee of Experts *deplores* the deaths and acts of violence referred to in the representation. The Committee recalls that respect for the collective rights of indigenous peoples recognized in the various parts of the Convention is an essential element in creating a climate of trust between the authorities and indigenous peoples and in guaranteeing cohesion and social peace through inclusion and dialogue. ***The Committee urges the Government to continue taking the necessary measures to determine responsibilities and punish those guilty of the murders of the four leaders of the Alto Tamaya – Saweto indigenous community. It requests the Government to provide detailed information on the specific progress made in the investigations into the murders and other cases of violence referred to in the representation with a view to determining responsibilities and punishing those found guilty. The Committee also requests the Government to take the necessary measures to ensure that indigenous peoples are able to exercise fully in freedom and security the rights set out in the Convention and to ensure that no form of force or coercion is used in violation of the human rights and fundamental freedoms of indigenous peoples.***

*Article 6. Consultation.* In its previous comments, the Committee considered that the adoption of Act No. 29785 on the right to prior consultation of indigenous and native peoples constituted progress in the establishment of effective consultation mechanisms that take into account the visions of governments and indigenous and tribal peoples concerning the procedures to be followed to give effect to the Convention. In accordance with the Act, the Vice-Ministry for Intercultural Affairs includes in its functions organizing dialogue and articulating and coordinating state policy on the implementation of the right to prior consultation. In accordance with section 9, state bodies are required to identify proposed legislative or administrative measures that are directly related to the collective rights of indigenous and native peoples with a view to holding consultations when it is concluded that there may be a direct effect on their collective rights. Section 3 of the Regulations of the Act provides that the public body responsible for adopting legislative or administrative measures that will be the subject of consultation shall be the initiating institution. The Committee invites the Government to provide information on the consultations held by initiating institutions, and particularly on the consultations held on proposals for legislative or administrative measures which may affect directly the collective rights of indigenous peoples.

The Committee takes due note of the information provided by the Government on the training workshops held on the exercise of the right to consultation and the legal tools to guarantee these rights which were designed and developed with representatives of indigenous organizations. For example, in 2014, a total of 61 training workshops were held in which over 3,634 persons participated (67 per cent of whom were indigenous leaders) in the departments of Loreto, Ucayali and Junín. The Government also indicates that the Vice-Ministry for Intercultural Affairs provided technical assistance in this

context to public institutions in relation to the procedures for prior consultation. With reference to the consultation processes held, the Government provides detailed information on the 22 consultation processes organized since the entry into force of Act No. 29785, which were related, among other subjects, to exploration and exploitation contracts (such as the renewal of the oil concession in lot 192), the Regulations of the Act on forestry and forest fauna, the Intercultural Sectoral Health Policy and the National Plan for Bilingual Intercultural Education. Representatives of the seven national indigenous organizations participated in these processes, and agreements were reached in 20 of them between the State and the indigenous peoples involved.

The Committee notes the difficulties referred to in the Alternative Report 2015 respecting effective compliance with the right of consultation related to the lack of knowledge of indigenous matters by the officials responsible for the process, and the limitations of indigenous organizations (inadequacy of financial and logistical resources, lack of technical knowledge in the various areas). The view is expressed in the Alternative Report that the imbalance in the relations between the State and indigenous peoples is resulting in consultation processes becoming merely procedural.

***The Committee encourages the Government to continue making every effort to hold meaningful and substantive consultations with indigenous peoples on each occasion that legislative or administrative measures are planned that may affect them directly, and requests the Government to provide updated information on this subject. It also requests the Government to continue taking measures to improve the training provided to indigenous peoples, and to the officials responsible and other actors on the objectives, stages and importance of consultation processes, and to report on any measures intended to establish appropriate mechanisms through which indigenous peoples can participate fully in the consultation processes.***

*Articles 6, 7 and 15.* 1. *Consultations prior to undertaking or authorizing mining concessions.* The Committee previously requested the Government to provide examples of projects submitted to the Ministry of Energy and Mining which required prior consultation and the participation of the peoples concerned in the benefits deriving from such activities. The Committee notes that, in the context of the representation examined by the tripartite committee in 2016, the complainant organizations considered that mining concessions were granted without holding consultation processes with the peoples concerned and without evaluation of the territory for which the concession was granted. In this connection, the Government indicates that a mining concession is a title which grants the exclusive right of exploration and exploitation of mineral resources in a specific area, but does not authorize the commencement of exploration or exploitation activities. Nor does it produce direct effects on the collective rights of indigenous peoples and therefore does not require the organization of a prior consultation process before the concession is granted. The Government adds that the situations in which it is necessary to hold prior consultations are the granting of beneficiary concessions, the authorization of the commencement of exploration in mining concessions and the authorization of the commencement of exploitation in metal and non-metal mining concessions. In this regard, the Committee notes the Government's indications in its report that 95 applications were made to the General Directorate of Mining between 2014 and 2015 for authorization to commence exploration activities, seven applications for beneficial concessions and 26 applications for authorization to commence exploitation. The administrative authority noted that the rural communities encountered did not meet the criteria for identification as indigenous peoples, for which reason prior consultations were not held. The Committee considers that it is important to identify the indigenous communities on whose lands mining concessions are sought and to involve them as early as possible in decision-making processes relating to the granting of mining concessions. ***The Committee requests the Government to indicate how the established procedures allow proper identification of indigenous peoples whose interests might be affected by the mining concessions. The Committee also requests the Government to provide information on the consultations held with the representatives of the indigenous peoples concerned prior to undertaking or authorizing any programmes of prospection or exploitation of mining resources, with a view to determining whether and to what extent the interests of these peoples would be prejudiced. Furthermore, the Committee requests the Government to continue providing information on the number of applications made to the General Directorate of Mining for authorization to commence exploration and/or exploitation, the number of instances in which consultations were held with representatives of indigenous peoples, as well as information on any disputes arising from these processes.***

2. *Regulation of mining and hydroelectricity.* In its previous comments, the Committee noted that the Environmental Evaluation and Inspection Agency (OEFA) is responsible for imposing corrective and preventive measures to alleviate and reduce the environmental hazards of operations and facilities established in the context of investment projects. It requested the Government to indicate the manner in which this new environmental inspection system has contributed to protecting and preserving the environment of the territories inhabited by the peoples concerned.

In its report, the Government refers to the measures adopted to reinforce participation by citizens in environmental monitoring under the responsibility of the OEFA, and the supervisory and inspection functions of the OEFA. The Committee notes that the Government has not provided specific information on the activities undertaken by the OEFA. Nor has it provided information on cases of environmental contamination and of lack of prior consultation respecting exploitation and exploration activities for natural resources on indigenous lands referred to in the Alternative Report 2013, on which the Committee requested information. The Committee notes in this regard that both the Alternative Report 2015 and the 2017 observations of the CGTP indicate that the adoption of "Environmental Packages" consisting of a series of legislative provisions introducing greater flexibility into environmental standards that protect the rights of indigenous

peoples and the environment. The communications indicate that a series of decrees and laws have been adopted to facilitate the access to lands of public and private investment projects which would affect the rights of indigenous peoples. *The Committee requests the Government to provide its comments on this subject and to specify the manner in which the cooperation of the peoples concerned is secured in the preparation of environmental impact studies (Articles 7 and 15).*

3. *Legislation respecting consultation, participation and cooperation.* The Committee noted previously that taxation and budgetary rules are not subject to consultation (section 5(k) of the Regulations of the Act on the Right to prior consultation). It also noted that the Regulations do not require consultation on any exceptional or temporary decisions by the State to address emergency situations arising out of natural or technological disasters (section 5(l) of the Regulations) or administrative measures considered to be supplementary (12th supplementary, transitional and final provision of the Regulations). The current legislation has also left pending the adoption of implementing legislation respecting machinery for participation and for participation in benefits (fifth and tenth supplementary, transitional and final provisions of the Regulations), which are required by the Convention. In this regard, the Committee notes the request made in the Alternative Report 2015 for the derogation of the exceptions envisaged in the Regulations.

*The Committee requests the Government, in consultation with indigenous peoples and other stakeholders concerned, to adopt the necessary legislative measures and to make the necessary revisions to the legislation in force, taking into account that they do not give full effect to the provisions respecting the participation and cooperation of indigenous peoples set out in Article 6(1)(b) and (c), Article 7 and Part II (Lands) of the Convention.*

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 107 (Tunisia)**; **Convention No. 169 (Dominica, Fiji, Nicaragua, Paraguay, Peru)**.

## *Specific categories of workers*

### **Direct requests**

Requests regarding certain matters are being addressed directly to the following States: **Convention No. 149** (*Kyrgyzstan, Tajikistan*); **Convention No. 189** (*Argentina, Plurinational State of Bolivia, Colombia, Costa Rica, Ireland, Nicaragua, Paraguay, Switzerland*).

## **II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labor Conference (article 19 of the Constitution)**

### **General observation**

*Constitutional obligation of submission.* The Committee recalls that, by virtue of the relevant provisions of article 19(5), (6) and (7) of the ILO Constitution, each of the member States of the Organization undertakes to submit the instruments adopted by the International Labour Conference to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. Members must submit the instrument to the competent national authority within a period of one year at most from the closing of the session of the Conference in which the instrument was adopted. If this is impossible due to exceptional circumstances, then submission must take place at the earliest practical moment and in no case later than 18 months after the closing of the session of the Conference at which the instrument was adopted.

In its *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities* (International Labour Office, Geneva, 2005), the Governing Body indicated that the competent national authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action to implement Conventions and Recommendations. Thus, the competent national authority should normally be the legislature.

Pursuant to article 19 of the ILO Constitution, the instruments that must be submitted to the competent national authority are the Conventions, Recommendations and Protocols adopted by the tripartite delegates – representatives of governments, employers and workers – at the International Labour Conference. The Committee recalls that the constitutional obligation of submission promotes the visibility and application of ILO instruments. The submission procedure does not require a State to take measures either to ratify a Convention or to apply part or all of a Recommendation. However, the procedure does require member States to bring instruments to the attention of their competent authority for discussion so that said authority may take a decision on the follow-up, if any, to be given to the instrument adopted by the Conference. The purpose of submission is, through this process, to disseminate information to the competent authority and to the general public regarding the existence of ILO Conventions, Recommendations and Protocols.

The Committee recalls that, pursuant to the ILO Constitution, member States are required to inform the ILO Director-General of the measures taken to bring instruments adopted by the Conference before the competent national authority and, as part of that effort, to provide information regarding the authority or authorities regarded as competent, and the action, if any, taken by them. Updated information on the list of Conventions, Recommendations and Protocols pending submission for each member State is available on the ILO web page for the Information System on International Labour Standards (NORMLEX) (<http://www.ilo.org/normlex>). *Noting that a number of member States are not up to date with respect to their constitutional obligation regarding submission, the Committee requests the member States concerned to provide the required information to the Office on the submission of the instruments adopted by the Conference to their competent national authority. It should be noted that the Committee typically requests information*

**on the date of submission, the identity of the competent national authority and information on any action taken with respect to the submission.**

*Recommendation No. 205.* The *Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)*, adopted by the Conference at its 106th Session (June 2017), provides guidance to member States on the measures to be taken to generate employment and decent work for the purposes of prevention, recovery, peace and resilience with respect to crisis situations arising from conflicts and disasters. According to the procedures established in article 19(6), of the ILO Constitution, *Recommendation No. 205* must be submitted to the competent national authorities within one year or, exceptionally, no later than 18 months from the closing of the session of the Conference in which the instrument was adopted (which in this instance would be by 16 June 2018 or, in exceptional circumstances, by 16 December 2018). **The Committee welcomes the information received to date on the submission of Recommendation No. 205 to the competent national authorities and requests all other member States to provide the required information to the Office by the constitutional deadline.**

*Communication to, and consultations with, the social partners.* The Committee would like to draw the attention of member States to article 23(2) of the ILO Constitution, which requires each member State to communicate to the representative organizations of employers and workers a copy of the information presented to the Office concerning submission to the competent national authorities. Additionally, the Committee recalls that member States that have ratified the *Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*, are required – under *Article 5(1)(b)* – to hold effective tripartite consultations on the proposals to be made to the competent national authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the ILO Constitution. **The Committee therefore takes this opportunity to remind all member States to communicate to the representative organizations of employers and workers copies of the information provided to the Office in accordance with article 19 of the ILO Constitution, taking into account their obligations under Convention No. 144, as appropriate.**

*Serious failure to submit.* To facilitate the work of the Conference Committee on the Application of Standards, the Committee highlights cases of governments that have not complied with their obligation to submit instruments to their competent national authority for at least seven Conference sessions at which one or more instruments were adopted. These long-standing cases of non-compliance are referred to in the Observations of the Committee as cases of “serious failure to submit”. The Committee takes note of the June 2017 discussion in the Conference Committee on the Application of Standards relative to cases of serious failure by member States to respect their reporting or other standards-related obligations, including submission to the competent authorities of the instruments adopted by the Conference. The Committee recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO’s standards-related activities. **The Committee expresses the firm hope, as did the Committee on the Application of Standards in June 2017, that the governments concerned will take appropriate measures to comply with their obligation to submit Conventions, Recommendations and Protocols to their competent national authority.**

*ILO technical assistance.* For additional information on the submission procedures, the Committee refers to the Governing Body’s *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities* (International Labour Office, Geneva, 2005). The Committee notes that some member States have requested and received technical assistance from the ILO to resolve difficulties encountered in complying with their constitutional obligation of submission. **The Committee reminds member States that, if they so wish, the Office remains available to provide technical assistance in this regard.**

## Afghanistan

*Failure to submit.* **The Committee requests the Government to provide information on the submission to the National Assembly of the instruments adopted at the 96th, 99th, 100th, 101st, 103rd and 104th Sessions of the Conference.**

## Albania

*Failure to submit.* The Committee notes that the Government has not replied to its previous comments. **The Committee refers to its previous observations and requests the Government to provide information on the submission to the Albanian Parliament of the remaining instruments adopted by the Conference at its 82nd Session (Protocol of 1995 to the Labour Inspection Convention, 1947), 90th Session (Recommendations Nos 193 and 194), as well as the instruments adopted at the 78th, 84th, 86th, 89th, 92nd, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd and 104th Sessions.**

## Angola

*Submission to the National Assembly.* The Committee notes that the ratification of the Work in Fishing Convention, 2007 (No. 188), was registered on 11 October 2016. *The Committee once again requests the Government to provide the required information on the 13 instruments pending submission to the National Assembly adopted at the 91st, 92nd, 94th, 95th, 99th, 100th, 101st, 103rd and 104th Sessions of the Conference (2003–15), as well as the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) (79th Session, 1992), the Protocol of 1995 to the Labour Inspection Convention, 1947 (82nd Session, 1995), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) (86th Session, 1998).*

## Antigua and Barbuda

*Submission to Parliament.* The Committee recalls the information provided by the Government in April 2014 indicating that the instruments adopted by the Conference from its 83rd to its 101st Sessions (1996–2012) were resubmitted by the Minister of Labour to the Cabinet of Antigua and Barbuda on 11 March 2014. *The Committee urges the Government to specify the dates on which the instruments adopted by the Conference from its 83rd to its 101st Sessions were submitted to the Parliament of Antigua and Barbuda.*

*In addition, the Committee once again requests the Government to provide information on the submission to Parliament of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, as well as the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session.*

## Azerbaijan

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to its competent authority (the National Assembly). The Committee therefore urges the Government to provide information with regard to the submission to the National Assembly (Milli Mejlis) of the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) (79th Session), and the instruments adopted at the 83rd, 84th, 89th, 90th, 94th, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions of the Conference. It also requests the Government to indicate the date of submission of the Human Resources Development Recommendation, 2004 (No. 195), to the National Assembly.*

## Bahamas

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament). The Committee therefore urges the Government to provide information on the submission to Parliament of the 23 instruments adopted by the Conference at 13 sessions held between 1997 and 2015 (85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).*

## Bahrain

*Serious failure to submit.* The Committee notes that the Government has not replied to its previous comments. It recalls the information provided by the Government in November 2016 indicating that the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), was submitted to the competent authority, in accordance with the Constitution of Bahrain. The Committee notes, however, that no information was provided on the date of submission to the National Assembly. In its previous observations, the Committee noted that the national practice requires, by virtue of the Constitution of Bahrain, the submission of Conventions to the Council of Ministers, which is the body responsible for the formulation of the State's public policy and for following up on its implementation (article 47(a) of the Constitution of Bahrain). The Committee further recalls the Government's indication in September 2011 that, with the establishment of a National Assembly – composed of the Consultative Council (*Majlis Al-Shura*) and the Council of Representatives (*Majlis al-Nuwab*) – there was a need to establish a new mechanism for submission of the instruments adopted by the Conference to the National Assembly. The Committee notes that the ILO indicated its disposal to explore with the national authorities the manner in which a mechanism could be established for the effective submission of instruments adopted by the Conference to the National Assembly in order to ensure the fulfilment of the Government's obligations under the ILO Constitution. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017,*

*that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). The Committee therefore urges the Government to provide full information on the submission to the National Assembly of the instruments adopted by the Conference at 13 sessions held between 2000 and 2015. The Committee reminds the Government of the availability of ILO technical assistance in this regard.*

## Bangladesh

*Serious failure to submit.* The Committee notes that the Government has not replied to its previous comments. It recalls the information provided by the Government in March 2015 indicating that the instruments adopted by the Conference at its 103rd Session were thoroughly examined by the Tripartite Consultative Council (TCC) at its 54th meeting held on 24 December 2014. *The Committee refers to its previous comments and once again requests the Government to provide information on the submission to Parliament of the instruments adopted by the Conference at its 77th Session (Convention No. 170 and Recommendation No. 177), 79th Session (Convention No. 173 and Recommendation No. 180), 85th Session (Recommendation No. 188), as well as all those adopted at the 81st, 82nd, 83rd, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions.*

## Belize

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). The Committee requests the Government to provide information on the submission to the National Assembly of 40 pending instruments adopted by the Conference at 20 sessions held between 1990 and 2015.*

## Plurinational State of Bolivia

*Submission to the competent national authority.* The Committee notes that the Government has not replied to its previous comments. It recalls the information provided by the Government indicating that the Conventions adopted by the Conference between 1990 and 2003 were submitted on 26 April 2005. Nevertheless, information has not been provided on the submission to the Plurinational Legislative Assembly of the 13 Recommendations and the three Protocols adopted by the Conference during that period (1990–2003). *The Committee once again requests the Government to provide information on the submission to the Plurinational Legislative Assembly of the remaining three Conventions adopted by the Conference since 2006 for which submission is still pending, as well as 21 Recommendations and four Protocols.*

## Brunei Darussalam

*Failure to submit.* The Committee notes that the Government has not replied to its previous comments. *The Committee once again requests the Government to provide information on the submission to the competent national authorities, within the meaning of article 19(5) and (6) of the ILO Constitution, of the instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd and 104th Sessions (2007–15).* It recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Burkina Faso

*Submission to the National Assembly.* *The Committee once again requests the Government to supply the required information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).*

## Burundi

*Failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. *The Committee once again requests the Government to provide information on the submission to the National Assembly of the instruments adopted at the 94th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions of the Conference.*

## Central African Republic

*Submission to the National Assembly.* The Committee notes that the Government has not replied to its previous comments. **The Committee requests the Government to provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Chad

*Submission to the National Assembly.* **The Committee once again requests the Government to supply the required information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Chile

*Submission to the National Congress.* The Committee notes that the Government has not replied to its previous comments. **The Committee once again requests the Government to provide the required information on the submission to the National Congress of the 30 instruments adopted at 16 sessions of the Conference held between 1996 and 2015 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th (Employment Relationship Recommendation, 2006 (No. 198)), 96th, 99th, 101st, 103rd and 104th Sessions).**

## Comoros

*Serious failure to submit.* The Committee notes with **concern** that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to the Assembly of the Union of Comoros of the 43 instruments adopted by the Conference at the 21 sessions held between 1992 and 2015.**

## Congo

*Submission to the National Assembly.* The Committee notes that the Government has not replied to its previous comments. The Committee recalls the statements made by the Government representative to the Conference Committee in 2011 and 2012 indicating that the Ministry of Labour and the General Secretariat of the Government had agreed to submit a certain number of Conventions to the National Assembly every three months, with a view to their ratification. **The Committee once again requests the Government to complete the submission procedure in relation to 64 Conventions, Recommendations and Protocols, adopted by the Conference during 30 sessions from 1970 to 2015, which have not yet been submitted to the National Assembly.**

## Croatia

*Serious failure to submit.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2017 indicating that her Government took its standards-related obligations very seriously. She thanked the Office for the technical assistance provided in 2016. **The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to the Croatian Parliament of the 21 instruments adopted by the Conference at 12 sessions held between 1998 and 2015 (86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).**

## Democratic Republic of the Congo

*Submission to Parliament.* The Committee notes with **interest** the detailed information provided by the Government in June 2017 indicating that 27 instruments adopted by the Conference from its 83rd Session (1995) to 96th Session (2007) were submitted to Parliament on 9 March 2016. **The Committee welcomes the progress made by the Government in complying with its constitutional obligation and requests the Government to continue to provide the relevant information on the remaining instruments pending submission to Parliament adopted from the 99th Session (2010) to 104th Session (2015) of the Conference.**

## Dominica

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to the House of Assembly of the 41 instruments adopted by the Conference during 20 sessions held between 1993 and 2015 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).* It recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## El Salvador

*Serious failure to submit.* The Committee notes the information provided by a Government representative before the Conference Committee in June 2017 indicating that her country was committed to submitting Conventions and Recommendations to the competent national authority, with the support and technical assistance of the ILO. The preparation of a protocol of institutional procedures for the submission of the Conventions and Recommendations had begun. To that end, an initial document had been drawn up and was being examined by the Ministry of Labour and Social Welfare, the Ministry of Foreign Affairs and the Legislative Assembly. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent national authority. The Committee therefore urges the Government to submit to the Legislative Assembly the instruments adopted at the 22 sessions of the Conference held between October 1976 and June 2015. Moreover, the Committee once again requests the Government to provide information on the submission of the remaining instruments adopted by the Conference at its 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163), 69th (Recommendation No. 167) and 90th (Recommendations Nos 193 and 194) Sessions.*

## Equatorial Guinea

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to Parliament of the 34 instruments adopted by the Conference between 1993 and 2015.*

## Fiji

*Serious failure to submit.* The Committee notes the information provided by the Government in September 2017 indicating that from 2006 to September 2013 the competent authority in Fiji was the Cabinet of Ministers. The Government further indicates that the competent authority is now the Parliament of Fiji. The Committee refers to its comments made since 2012 in which it noted that the Government would be able to submit the instruments adopted by the Conference only after the establishment of a Parliament. *The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (Parliament). The Committee therefore requests the Government to provide information on the submission to Parliament of the 21 instruments adopted by the Conference at the 83rd, 86th, 88th, 90th, 91st, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions (1996–2015).*

## Gabon

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information concerning the submission to Parliament of the 24 Conventions, Recommendations and Protocols adopted at the 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions of the Conference.*

## Gambia

*Submission to the National Assembly.* The Committee notes with **regret** that the Government has not replied to its previous comments. **The Committee once again requests the Government to provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Grenada

*Failure to submit.* The Committee notes with **concern** that the Government has not replied to its previous comments. **The Committee refers to its previous observations and once again urges the Government to communicate the date at which the instruments adopted by the Conference between 1994 and 2006 were submitted and the decisions taken by the Parliament of Grenada on the instruments submitted. It also renews its request that the Government provide information on the submission to the Parliament of Grenada of the instruments adopted at the 96th, 99th, 100th, 101st, 103rd and 104th Sessions of the Conference (2007–15).**

## Guinea

*Submission to the National Assembly.* The Committee notes the information provided by the Government in September 2017 indicating that the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Mines Convention, 1995 (No. 176), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Domestic Workers Convention, 2011 (No. 189), and their corresponding Recommendations were submitted to the National Assembly. The Committee notes with **interest** that the ratification of Conventions Nos 167, 176, 187 and 189 was registered on 25 April 2017. The Government indicates that the instruments still pending submission are currently being examined and will subsequently be submitted to the National Assembly. **The Committee welcomes the progress made by the Government in complying with its constitutional obligation and requests the Government to provide information regarding the submission to the National Assembly of the 28 instruments adopted at 15 sessions held by the Conference between October 1996 and June 2015 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 101st, 103rd and 104th Sessions).**

## Guinea-Bissau

*Serious failure to submit.* The Committee notes with **concern** that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to the National People's Assembly of the instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions (2001–15).**

## Haiti

*Serious failure to submit.* The Committee notes with **concern** that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). The Committee therefore urges the Government to provide information with regard to the submission to the National Assembly of the following instruments:**

- (a) **the remaining instruments from the 67th Session (Conventions Nos 154 and 155, and Recommendations Nos 163 and 164);**
- (b) **the instruments adopted at the 68th Session;**
- (c) **the remaining instruments adopted at the 75th Session (Convention No. 168, and Recommendations Nos 175 and 176); and**
- (d) **the instruments adopted at 24 sessions of the Conference held between 1989 and 2015.**

## Hungary

*Submission to the National Assembly.* The Committee notes with **concern** that the Government has not replied to its previous comments. **The Committee once again requests the Government to provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Islamic Republic of Iran

*Submission to the Islamic Consultative Assembly.* The Committee notes the information provided by the Government in November 2017 indicating that all the latest instruments adopted by the Conference have been submitted to the national legislative authorities. **The Committee requests the Government to provide information on the date of submission to the Islamic Consultative Assembly of the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (90th Session, June 2002), and of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Iraq

*Submission to the Council of Representatives.* The Committee notes the detailed information provided by the Government in November 2017, including the dates of submission to the Council of Representatives (*Majlis Al-Nuwaab*) of each of the instruments adopted by the Conference at its 88th, 90th, 92nd, 95th, 96th, 99th, 100th and 101st Sessions (2000–12). The Committee further notes the Government's indication that Recommendations submitted to the Council of Representatives were not examined by the Council, but were transmitted to the Ministry of Labour and Social Affairs. The Government indicates that the Ministry of Labour and Social Affairs is the competent authority with respect to Recommendations. The Committee notes the information provided by the Government in March 2017 indicating that the Protocol of 2014 to the Forced Labour Convention, 1930, was submitted to the competent authority. It notes in this regard that no information was provided on the date of submission or on whether the instrument in question was in fact submitted to the Council of Representatives (*Majlis Al-Nuwaab*). The Committee once again recalls that, by virtue of article 19(5) and (6) of the ILO Constitution, each of the Members of the Organization undertakes to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. In the 2005 memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. **The Committee therefore requests the Government to provide more specific information on the submission to the Council of Representatives of the remaining 12 instruments adopted by the Conference from 2000 to 2015.**

## Jamaica

*Submission to Parliament.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2017 indicating that the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th, 99th, 100th, 101st and 103rd Sessions were submitted to Parliament on 14 September 2016. In addition, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, was submitted to Parliament on 24 January 2017. The Government representative further indicated that, in accordance with established practice, the ILO Director-General would be informed of the actions taken by Parliament in connection with the submissions made. The Committee notes with **interest** that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), and the Protocol of 2014 to the Forced Labour Convention, 1930, was registered on 13 June 2017. **The Committee welcomes the progress made by the Government in complying with its constitutional obligation and invites the Government to continue to regularly provide information on the submission to Parliament of instruments adopted by the Conference.**

## Jordan

The Committee notes the information provided by the Government in September 2017 indicating that the instruments adopted by the Conference at its 92nd, 95th, 96th, 99th, 100th, 101st and 103rd Sessions (2004–14) were submitted to the House of Representatives (*Majlis Al-Nuwaab*) on 17 November 2014. It also notes that the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, is being examined by a tripartite committee prior to its submission to the House of Representatives. **The Committee requests the Government to provide information on the submission of Recommendation No. 204 to the House of Representatives and on any actions taken with respect to the submission made on 17 November 2014.**

## Kazakhstan

*Failure to submit.* The Committee recalls the information provided by the Government in October 2016, indicating that the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, was submitted to Parliament. The Committee noted, however, that the date of submission was not provided. **The Committee therefore requests the Government to provide information on the date of submission of Recommendation No. 204 to Parliament. Moreover, the Committee once again requests the Government to provide information on the submission to Parliament of the remaining 34 instruments adopted by the Conference between 1993 and 2015, including on the date of submission and on any actions taken by Parliament with respect to the submission of these instruments.**

## Kiribati

*Serious failure to submit.* The Committee notes that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore requests the Government to provide information on the submission to Parliament of the 20 instruments adopted by the Conference at 11 sessions held between 2000 and 2015 (88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).**

## Kuwait

*Serious failure to submit.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2017 indicating that fulfilling the ILO's constitutional obligations was a priority for his Government. The submission process would be reviewed, and the Office would be informed in the near future of the steps taken. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore once again requests the Government to indicate the date of submission of the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions to the National Assembly (Majlis Al-Ummah). It also refers to its previous comments and once again requests the Government to specify the date of submission to the National Assembly of the instruments adopted at the 77th Session (Conventions Nos 170 and 171, Recommendations Nos 177 and 178, and the Protocol of 1990), 80th Session (Recommendation No. 181), 86th Session (Recommendation No. 189) and 89th Session (Convention No. 184 and Recommendation No. 192) of the Conference.**

## Kyrgyzstan

*Serious failure to submit.* The Committee notes that the Government has not replied to its previous comments. It recalls the information provided by the Government in November 2016 concerning the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), including on the informal economy in Kyrgyzstan. The Committee noted, however, that the Government has provided no information on submission. The Committee once again refers to the comments it has been formulating since 1994, and recalls that, under article 19 of the ILO Constitution, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. The Committee recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to the competent national authority of the 41 instruments adopted by the Conference at 20 sessions held from 1992 to 2015. The Committee reminds the Government of the availability of ILO technical assistance to assist it in overcoming this serious delay.**

## Lebanon

*Submission to the National Assembly.* The Committee recalls the information provided by the Government in February 2016 indicating that the Ministry of Labour had submitted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), to the Council of Ministers for consideration, and that the Council of Ministers had decided to establish a special commission to examine the Recommendation. **The Committee refers to its previous comments and once again requests the Government to indicate the date on which the instruments adopted by**

*the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15) were submitted to the National Assembly (Majlis Al-Nuwwab).*

## Lesotho

*Submission to the National Assembly.* The Committee notes with **concern** that the Government has not replied to its previous comments. **The Committee requests the Government to provide information on the submission to the National Assembly and to the Senate of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Liberia

*Serious failure to submit.* The Committee notes that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore requests the Government to provide information on the submission to the National Legislature of the 22 remaining Conventions, Recommendations and Protocols adopted by the Conference between 2000 and 2015, as well as the 1990 and 1995 Protocols.**

## Libya

*Serious failure to submit.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2017 indicating that his Government was committed to cooperating with the Committee and complying with its constitutional obligations. The situation in his country was responsible for the Government's failure to respect standards-related obligations. Information would be communicated to the ILO in the near future. Moreover, the Committee recalls the information provided by the Government in September 2016 indicating that the instruments adopted by the Conference had been transmitted to the relevant ministries for examination prior to their submission to the competent authority. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authorities. The Committee therefore requests the Government to provide information on the submission to the competent national authorities (within the meaning of article 19(5) and (6) of the ILO Constitution) of the Conventions, Recommendations and Protocols adopted by the Conference at 17 sessions held between 1996 and 2015.**

## Malawi

*Submission to Parliament.* The Committee recalls the information provided by the Government in October 2016 indicating that the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, was submitted to the Minister of Labour, Youth, Sports and Manpower Development. **The Committee once again requests the Government to provide information on the submission to Parliament of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Malaysia

*Failure to submit.* The Committee notes with **regret** that the Government has not replied to its previous comments. **The Committee once again requests the Government to provide information on the submission to the Parliament of Malaysia of the instruments adopted by the Conference at its 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd and 104th Sessions (2006–15).**

## Republic of Maldives

*Submission to the competent national authority.* The Committee notes with **concern** that the Government has not replied to its previous comments. The Committee recalls that the Republic of Maldives became a Member of the Organization on 15 May 2009. Subsequently, in accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions. **The Committee requests the Government to provide information on the submission to the People's Majlis of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).** The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the People's Majlis of the instruments adopted by the Conference.

## Malta

*Failure to submit.* The Committee notes with *regret* that the Government has not replied to its previous comments. **The Committee once again requests the Government to provide information on the submission to the House of Representatives of the instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd and 104th Sessions (2007–15).**

## Republic of Moldova

*Submission to Parliament.* The Committee notes that the Government has not replied to its previous comments. **The Committee once again requests the Government to provide information on the submission to Parliament of the instruments adopted by the Conference at its 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st and 103rd Sessions.**

## Mozambique

*Submission to the Assembly of the Republic.* The Committee notes the information provided by the Government to the Office in May 2017 and to the Conference Committee in June 2017, indicating that the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, was submitted to the Assembly of the Republic on 12 April 2017. The Committee also notes with *interest* the Government's indication that the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Safety and Health in Mines Convention, 1995 (No. 176), and the Protocol of 2014 to the Forced Labour Convention, 1930, were submitted to the Assembly of the Republic for ratification. The Government further indicates that other instruments will be submitted to the Assembly of the Republic for ratification before the end of 2017. **The Committee welcomes the progress made by the Government in complying with its constitutional obligation and requests the Government to provide information on the submission to the Assembly of the Republic of the 33 instruments adopted by the Conference at 16 sessions held between 1996 and 2014. It also requests the Government to specify the date of submission to the Assembly of the Republic of Conventions Nos 129 and 176 and the 2014 Protocol.**

## Pakistan

*Serious failure to submit.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2017, recalling that provincial governments were required to submit the instruments adopted by the Conference to their respective competent authorities, and requesting technical assistance in this regard. The Government representative added that her Government was committed, with ILO technical assistance, to submit all instruments pending submission to the competent national authorities. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee once again requests the Government to complete the procedure in order to be in a position to submit the 38 instruments adopted by the Conference at 18 sessions held between 1994 and 2015 to the competent national authorities. The Committee reminds the Government that, if it so wishes, it may seek technical assistance from the Office.**

## Papua New Guinea

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to submit to the National Parliament the 22 instruments adopted by the Conference at 13 sessions held between 2000 and 2015.**

## Rwanda

*Failure to submit.* The Committee notes the information provided by a Government representative to the Conference Committee in June 2017 indicating that a number of Conventions and Recommendations had been submitted to the competent authorities. Moreover, the Committee notes, with *interest* that the ratification of six Conventions was approved by Parliament on 15 May 2017: the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); the Labour Administration Convention, 1978 (No. 150); the Collective Bargaining Convention, 1981 (No. 154); the Occupational Safety and Health Convention, 1981 (No. 155); the Private Employment Agencies Convention, 1997 (No. 181); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The Government representative added however that legislative procedures for official publication of the instruments of ratification remained to be done. **The Committee welcomes this information and requests the Government**

to also provide information on the date of submission to the National Assembly of the remaining Conventions, Recommendations and Protocols adopted by the Conference at 18 sessions held between 1993 and 2015 (80th, 82nd, 83rd, 84th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd and 104th Sessions).

## Saint Kitts and Nevis

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. The Committee also recalls that the competent national authority should normally be the legislature, that is, in the case of Saint Kitts and Nevis, the National Assembly. *The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to the National Assembly of 26 instruments adopted by the Conference at 15 sessions held between 1996 and 2015 (83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).*

## Saint Lucia

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to Parliament of the remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2015 (66th, 67th (Conventions Nos 155 and 156 and Recommendations Nos 164 and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).*

## Saint Vincent and the Grenadines

*Serious failure to submit.* The Committee notes with *concern* that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the House of Assembly). The Committee therefore urges the Government to provide information on the submission to the House of Assembly of the 28 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 15 sessions held from 1995 to 2015 (82nd, 83rd, 85th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).*

## Samoa

*Serious failure to submit.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2017, indicating that his Government would initiate the submission process prior to the next meeting of the Committee of Experts. The Committee notes that no such information has yet been provided. The Government representative added that information had been received from the International Labour Standards Department concerning the submission of instruments adopted by the Conference to the competent national authority. Moreover, the Government representative requested technical assistance from the ILO Office in Fiji to assist it in complying with its submission obligations. *The Committee welcomes the information provided and requests the Government to provide information on the submission to the Legislative Assembly of the instruments adopted by the Conference at its 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions (2006–15).*

## Seychelles

*Serious failure to submit.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2017, indicating that a Cabinet Memorandum was presented in 2014 on the instruments pending submission to the National Assembly and that inter-ministerial consultations were ongoing with the social partners. Consultations were expected to be completed before the end of 2017. Submission of all pending

Recommendations would be submitted to the National Assembly by the end of 2017 and all pending Conventions and Protocols would be submitted by the end of July 2018. Moreover, the Government representative indicated that her Government intended to ratify the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189). *The Committee welcomes the information provided before the Conference Committee and requests the Government to provide updated information on the submission to the National Assembly of the 19 instruments adopted by the Conference at 11 sessions held from 2001 to 2015.*

## Sierra Leone

*Serious failure to submit.* The Committee notes with **deep concern** that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament). The Committee therefore urges the Government to provide information on the submission to Parliament of the instruments adopted by the Conference in October 1976 (Convention No. 146 and Recommendation No. 154, adopted at its 62nd Session) and the instruments adopted between 1977 and 2015. The Government is urged to take steps without delay to submit the 98 pending instruments to Parliament.*

## Solomon Islands

*Serious failure to submit.* The Committee notes with **deep concern** that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Parliament). The Committee therefore urges the Government to provide information on the submission to the National Parliament of the instruments adopted by the Conference between 1984 and 2015. The Government is urged to take steps without delay to submit the 62 pending instruments to the National Parliament.*

## Somalia

*Serious failure to submit.* The Committee notes the information provided by the Government representative before the Conference Committee in June 2016 and June 2017, indicating that her Government recognized the failure to submit instruments adopted by the Conference to the competent national authority. A prolonged period of civil war and insecurity in the country had played a role in non-compliance. The situation in the country was improving. Technical assistance was requested to assist her Government with reporting obligations. She was optimistic that her Government would meet its constitutional obligations in the very near future. *The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore requests the Government to provide information on the submission to the competent national authority concerning the 51 instruments adopted by the Conference between 1989 and 2015.*

## Swaziland

*Submission to the House of Assembly.* The Committee notes with **concern** that the Government has not replied to its previous comments. *The Committee once again requests the Government to provide information on the submission to the House of Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).*

## Syrian Arab Republic

*Serious failure to submit.* The Committee notes that the Government has not replied to its previous comments. It recalls the Government's indications in September 2015 that the Consultative Council for Consultation and Social Dialogue held discussions related to the submission of the instruments adopted by the Conference to the competent authorities. The Committee also recalls that 38 instruments adopted by the Conference are still waiting to be submitted to the People's Council. *The Committee hopes that, when national circumstances permit, the Government will be in a position to provide information on the submission to the People's Council of the instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th,*

81st, 82nd, 83rd, 85th, 86th, 90th (Recommendations Nos 193 and 194), 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions.

## The former Yugoslav Republic of Macedonia

*Failure to submit.* The Committee notes with **concern** that the Government has not replied to its previous comments. **The Committee requests the Government to provide the relevant information concerning the submission to the Assembly of the Republic (Sobranie) of 26 instruments (Conventions, Recommendations and Protocols) adopted by the Conference from October 1996 to June 2015.**

## Timor-Leste

*Submission to the National Parliament.* The Committee notes that the Government has not replied to its previous comments. **The Committee therefore reiterates its request that the Government provide information on the submission to the National Parliament of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Togo

*Submission to the National Assembly.* The Committee notes the information provided by the Government in April 2017 indicating that nine out of the 17 instruments pending submission were submitted to the National Assembly on 13 March 2017. The instruments submitted are the following: the Maternity Protection Convention, 2000 (No. 183), the Maternity Protection Recommendation, 2000 (No. 191), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, the HIV and AIDS Recommendation, 2010 (No. 200), the Domestic Workers Convention, 2011 (No. 189), the Social Protection Floors Recommendation, 2012 (No. 202), the Protocol of 2014 to the Forced Labour Convention, 1930, the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). **The Committee welcomes the information provided and invites the Government to provide information on any actions taken by the National Assembly with respect to the submission made on 13 March 2017. It also requests the Government to provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 90th (Recommendations Nos 193 and 194), 91st, 92nd, 95th (Recommendation No. 198), 96th and 100th (Recommendation No. 201) Sessions.**

## Tuvalu

The Committee notes with **concern** that the Government has not replied to its previous comments. It recalls that, as of 27 May 2008, Tuvalu became a Member of the Organization. In accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and the Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15). **The Committee hopes that the Government will soon be in a position to provide information on the submission to the competent authorities of the seven instruments adopted by the Conference between 2010 and 2015.** The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the ILO Constitution relating to the submission of the instruments adopted by the Conference to the competent authorities.

## United Arab Emirates

*Submission to the competent national authorities.* The Committee recalls the information provided by the Government in December 2015 indicating that the Ministry of Labour transmitted a copy of the Protocol of 2014 to the Forced Labour Convention, 1930, to the Human Rights Department and to the International Cooperation Department in the Ministry of the Interior, as well as to the National Committee to Combat Human Trafficking. The aforementioned bodies had considered that ratification of the Protocol should be deferred to a subsequent date. The Committee also recalls that for many years the Government had provided information on the submission of the instruments adopted by the Conference to the Council of Ministers. The Government also provided information on the subsequent adoption of a Cabinet decree containing a proposal to disseminate the instruments adopted by the Conference to all concerned institutions in the country. **The Committee once again requests the Government to complete the submission procedure and provide information on the submission to the competent national authorities of the MLC, 2006 (94th Session, February 2006), Convention No. 189 and Recommendations Nos 200, 201 and 202, adopted by the Conference at its 99th, 100th and 101st Sessions (2010–12). It also requests the Government to provide information on the submission to the competent national authorities of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, as well as the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session.**

## Vanuatu

*Serious failure to submit.* The Committee notes with **concern** that the Government has not replied to its previous comments. It recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to the competent national authority is a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. **The Committee expresses the firm hope, as did the Conference Committee in June 2016 and June 2017, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament of Vanuatu). The Committee therefore urges the Government to provide information on the submission to the Parliament of Vanuatu of the instruments adopted by the Conference at ten sessions held between 2003 and 2015 (91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions). The Committee reminds the Government that, if it so wishes, it may seek technical assistance from the Office.**

## Yemen

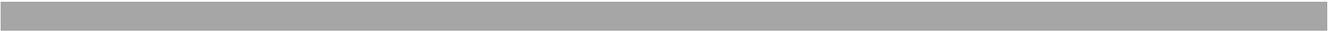
*Failure to submit.* The Committee notes the information provided by the Government in December 2017 indicating that it was not able to submit instruments adopted by the Conference to the House of Representatives due to the ongoing war in Yemen. **The Committee trusts that, when national circumstances permit, the Government will be in a position to provide information on the submission to the House of Representatives of the instruments adopted by the Conference at its 90th, 94th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions, as well as on the submission of Recommendations Nos 191, 192 and 198, adopted by the Conference at its 88th, 89th and 95th Sessions.**

## Zambia

*Submission to the National Assembly.* The Committee notes that the Government has not replied to its previous comments. It recalls the information provided by the Government in September 2010 indicating that 12 instruments adopted by the Conference from 1996 to 2007 had been submitted to the National Assembly. **The Committee once again requests the Government to indicate the date on which the abovementioned instruments were submitted to the National Assembly. It also requests the Government to provide information on any action taken by the National Assembly in relation to the submission, as well as on the tripartite consultations that took place with the social partners prior to the submission. In addition, the Committee once again requests the Government to provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd and 104th Sessions (2010–15).**

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Algeria, Argentina, Armenia, Austria, Barbados, Belarus, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Cabo Verde, Cambodia, Cameroon, China, Colombia, Côte d'Ivoire, Denmark, Djibouti, Dominican Republic, Ecuador, Eritrea, Georgia, Germany, Ghana, Guyana, Ireland, Kenya, Lao People's Democratic Republic, Madagascar, Mali, Marshall Islands, Mauritania, Mexico, Mongolia, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Palau, Panama, Paraguay, Peru, Russian Federation, San Marino, Sao Tome and Principe, Saudi Arabia, Serbia, Singapore, South Africa, South Sudan, Sudan, Suriname, Sweden, Tajikistan, United Republic of Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Uruguay, Uzbekistan, Bolivarian Republic of Venezuela.*



***Appendices***

**Appendix I. Reports requested on ratified Conventions**  
 (articles 22 and 35 of the Constitution)  
**List of reports registered as at 9 December 2017**  
**and reports not received**

Article 22 of the Constitution of the International Labour Organization provides that “each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request”. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th Session (November 1977), the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

## Appendix I. Reports requested on ratified Conventions

(articles 22 and 35 of the Constitution)

### List of reports registered as at 9 December 2017 and of reports not received

*Note: First reports are indicated in parentheses.*

<b>Afghanistan</b>	<b>4 reports requested</b>
<ul style="list-style-type: none"> <li>· 3 reports received: Conventions Nos. 105, 138, 182</li> <li>· 1 report not received: Convention No. 137</li> </ul>	
<b>Albania</b>	<b>11 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 29, 97, 102, 105, 122, 138, 143, 168, 176, 181, 182</li> </ul>	
<b>Algeria</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 12 reports received: Conventions Nos. 17, 19, 24, 29, 44, 87, 97, 105, 122, 138, 181, 182</li> <li>· 2 reports not received: Conventions Nos. 32, 42</li> </ul>	
<b>Angola</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos. 6, 17, 29, 91, 98, 105, 107, 138, 182</li> <li>· 5 reports not received: Conventions Nos. 12, 18, 19, 26, 27</li> </ul>	
<b>Antigua and Barbuda</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 29, 94, 105, 122, 138, 144, 182, MLC, 2006	
<b>Argentina</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 27, 29, 32, 42, 105, 138, 182	
<b>Armenia</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 17, 18, 29, 97, 105, 122, 138, 143, 182	
<b>Australia</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 12, 19, 27, 29, 42, 105, 122, 137, 182	
<b>Austria</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 24, 25, 27, 29, 42, 102, 105, 122, 128, 138, 182	
<b>Azerbaijan</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 27, 29, 32, 105, 122, 138, 182	
<b>Bahamas</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 12, 17, 19, 29, 42, 97, 105, 138, 182, MLC, 2006</li> </ul>	
<b>Bahrain</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 29, 105, 111, 138, 182	
<b>Bangladesh</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 18, 19, 27, 29, 32, 81, 87, 98, 105, 118, 144, 182, (MLC, 2006)	
<b>Barbados</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· 4 reports received: Conventions Nos. 90, 98, 182, (MLC, 2006)</li> <li>· 13 reports not received: Conventions Nos. 12, 17, 19, 29, 42, 95, 97, 102, 105, 118, 122, 128, 138</li> </ul>	

<b>Belarus</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 27, 29, 32, 105, 122, 138, 182	
<b>Belgium</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 27, 29, 32, 97, 105, 122, 138, (156), (159), 182, (184), MLC, 2006, (189)	
<b>Belize</b>	<b>30 reports requested</b>
· No reports received: Conventions Nos. 11, 12, 19, 26, 29, 42, 81, 87, 88, 94, 95, 97, 98, 99, 100, 105, 108, 111, 115, 135, 138, 141, 144, 150, 151, 154, 155, 156, 182, (MLC, 2006)	
<b>Benin</b>	<b>8 reports requested</b>
· 7 reports received: Conventions Nos. 18, 29, 98, 105, 138, 143, 182	
· 1 report not received: Convention No. 11	
<b>Bolivia, Plurinational State of</b>	<b>15 reports requested</b>
All reports received: Conventions Nos. 19, 29, 102, 105, 118, 121, 122, 128, 130, 131, 136, 138, 162, (167), 182	
<b>Bosnia and Herzegovina</b>	<b>16 reports requested</b>
All reports received: Conventions Nos. 12, 19, 24, 25, 27, 29, 32, 97, 102, 105, 121, 122, 138, 143, (151), 182	
<b>Botswana</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos. 19, 29, 87, 98, 100, 105, 138, 182	
<b>Brazil</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 12, 19, 29, 42, 97, 102, 105, 118, 122, 137, 138, 152, 168, 182	
<b>Brunei Darussalam</b>	<b>2 reports requested</b>
· No reports received: Conventions Nos. 138, 182	
<b>Bulgaria</b>	<b>16 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 24, 25, 27, 29, 32, 42, 44, 102, 105, 122, 138, 182, MLC, 2006	
<b>Burkina Faso</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 17, 18, 19, 29, 97, 105, 122, 138, 143, 182	
<b>Burundi</b>	<b>14 reports requested</b>
· 7 reports received: Conventions Nos. 1, 19, 29, 62, 64, 90, 101	
· 7 reports not received: Conventions Nos. 12, 17, 27, 42, 105, 138, 182	
<b>Cabo Verde</b>	<b>10 reports requested</b>
· 5 reports received: Conventions Nos. 29, 87, 98, 105, 182	
· 5 reports not received: Conventions Nos. 17, 19, 118, 138, (MLC, 2006)	
<b>Cambodia</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 29, 87, 105, 122, 138, 182	
<b>Cameroon</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 19, 29, 97, 105, 122, 138, 143, 182	

<b>Canada</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 27, 29, 32, 105, 122, 144, 182	
<b>Central African Republic</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 17, 18, 19, 29, 87, 98, 105, 118, 122, 138, 182	
<b>Chad</b>	<b>11 reports requested</b>
· No reports received: Conventions Nos. 6, 11, 29, 98, (102), 105, (122), 138, 144, 151, 182	
<b>Chile</b>	<b>16 reports requested</b>
All reports received: Conventions Nos. 12, 19, 24, 25, 27, 29, 32, 35, 37, 105, 121, 122, 138, 182, 187, (189)	
<b>China</b>	<b>7 reports requested</b>
· 6 reports received: Conventions Nos. 19, 27, 32, 122, 138, 182	
· 1 report not received: Convention No. (MLC, 2006)	
<b>China - Hong Kong Special Administrative Region</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 29, 32, 42, 97, 105, 122, 138, 144, 182	
<b>China - Macau Special Administrative Region</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 6, 17, 18, 19, 26, 27, 29, 87, 98, 105, 122, 138, 144, 182	
<b>Colombia</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 12, 17, 18, 19, 24, 25, 29, 105, 136, 138, 182	
<b>Comoros</b>	<b>28 reports requested</b>
· 17 reports received: Conventions Nos. 19, 26, 29, 42, 77, 78, 81, 87, 95, 98, 99, 100, 105, 111, 122, 138, 182	
· 11 reports not received: Conventions Nos. 6, 11, 12, 13, 14, 17, 52, 89, 101, 106, (144)	
<b>Congo</b>	<b>20 reports requested</b>
· 12 reports received: Conventions Nos. 6, 11, 13, 26, 95, 98, 100, 111, 119, 138, 144, 150	
· 8 reports not received: Conventions Nos. 29, 81, 87, 105, 152, 182, (185), (MLC, 2006)	
<b>Cook Islands</b>	<b>5 reports requested</b>
· No reports received: Conventions Nos. (11), (14), (29), (99), (105)	
<b>Costa Rica</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 29, 102, 105, 122, 130, 137, 138, 182	
<b>Côte d'Ivoire</b>	<b>6 reports requested</b>
· 4 reports received: Conventions Nos. 29, 105, 138, 182	
· 2 reports not received: Conventions Nos. 18, 19	
<b>Croatia</b>	<b>31 reports requested</b>
· 23 reports received: Conventions Nos. 11, 12, 13, 14, 19, 24, 25, 27, 45, 87, 90, 100, 103, 105, 111, 113, 119, 122, 132, 138, 148, 155, 161	
· 8 reports not received: Conventions Nos. 29, 32, 98, 102, 106, 121, 156, 182	
<b>Cuba</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 27, 29, 42, 97, 105, 122, 137, 138, 152, (182)	
<b>Cyprus</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 19, 29, 97, 105, 121, 122, 128, 138, 143, 152, 182, MLC, 2006	

<b>Czech Republic</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 27, 29, 105, 122, 138, 182	
<b>Democratic Republic of the Congo</b>	<b>27 reports requested</b>
· 9 reports received: Conventions Nos. 29, 62, 81, 88, 100, 105, 111, 138, 182	
· 18 reports not received: Conventions Nos. 11, 12, 19, 26, 27, 87, 94, 95, 98, 102, 118, 119, 120, 121, 135, 144, 150, 158	
<b>Denmark</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 27, 29, 105, 122, 138, 152, 182	
<b>Denmark - Faroe Islands</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 12, 18, 19, 27, 29, 105, MLC, 2006	
<b>Denmark - Greenland</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 19, 29, 105, 122	
<b>Djibouti</b>	<b>24 reports requested</b>
· 12 reports received: Conventions Nos. 11, 26, 77, 78, 87, 94, 95, 98, 99, 125, 126, 144	
· 12 reports not received: Conventions Nos. 12, 17, 18, 19, 24, 29, 37, 38, 105, 122, 138, 182	
<b>Dominica</b>	<b>26 reports requested</b>
· No reports received: Conventions Nos. 8, 11, 12, 14, 16, 19, 22, 26, 29, 81, 87, 94, 95, 97, 98, 100, 105, 108, 111, 135, 138, 144, 147, 150, 169, 182	
<b>Dominican Republic</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 19, 29, 105, 122, 138, 182, (187), (189)	
<b>Ecuador</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 29, 87, 97, 98, 102, 105, 118, 121, 122, 128, 130, 138, 152, 182	
<b>Egypt</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 17, 18, 19, 29, 87, 105, 118, 137, 138, 152, 159, 182	
<b>El Salvador</b>	<b>9 reports requested</b>
· 7 reports received: Conventions Nos. 12, 29, 98, 105, 122, 144, 156	
· 2 reports not received: Conventions Nos. 138, 182	
<b>Equatorial Guinea</b>	<b>14 reports requested</b>
· No reports received: Conventions Nos. 1, 14, 29, 30, (68), 87, (92), 98, 100, 103, 105, 111, 138, 182	
<b>Eritrea</b>	<b>7 reports requested</b>
· No reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138	
<b>Estonia</b>	<b>6 reports requested</b>
· No reports received: Conventions Nos. 27, 29, 105, 122, 138, 182	
<b>Ethiopia</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 29, 105, 138, 182	
<b>Fiji</b>	<b>8 reports requested</b>
· 5 reports received: Conventions Nos. 29, 105, 122, 138, 182	
· 3 reports not received: Conventions Nos. 11, 12, 19	

<b>Finland</b>	<b>16 reports requested</b>
All reports received: Conventions Nos. 12, 19, 27, 29, 105, 118, 121, 122, 128, 130, 137, 138, 152, 168, 182, (189)	
<b>France</b>	<b>16 reports requested</b>
· 14 reports received: Conventions Nos. 11, 12, 27, 29, 36, 105, 122, 124, 138, 141, 152, (181), 182, MLC, 2006	
· 2 reports not received: Conventions Nos. 97, 137	
<b>France - French Polynesia</b>	<b>13 reports requested</b>
· 10 reports received: Conventions Nos. 12, 17, 19, 24, 37, 38, 42, 44, 105, 122	
· 3 reports not received: Conventions Nos. 29, 125, 126	
<b>France - French Southern and Antarctic Territories</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 87, 98	
<b>France - New Caledonia</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 24, 29, 42, 100, 105, 122, (181)	
<b>Gabon</b>	<b>9 reports requested</b>
· 7 reports received: Conventions Nos. 12, 19, 81, 87, 98, (155), (167)	
· 2 reports not received: Conventions Nos. (161), MLC, 2006	
<b>Gambia</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138, 182	
<b>Georgia</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 87, 98	
<b>Germany</b>	<b>8 reports requested</b>
· 7 reports received: Conventions Nos. 27, 81, 87, 97, 98, 129, MLC, 2006	
· 1 report not received: Convention No. 152	
<b>Ghana</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 19, 81, 87, 94, 98, 108, 119, (MLC, 2006)	
<b>Greece</b>	<b>21 reports requested</b>
All reports received: Conventions Nos. 11, 17, 19, 27, 42, 77, 78, 90, 95, 100, 102, 111, 122, 124, 126, 141, 156, 160	
· 3 reports not received: Conventions Nos. 81, 87, 98	
<b>Grenada</b>	<b>6 reports requested</b>
· No reports received: Conventions Nos. 12, 19, 81, 87, 97, 98	
<b>Guatemala</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 19, 81, 87, 95, 97, 98, 118, 129	
<b>Guinea</b>	<b>26 reports requested</b>
· 18 reports received: Conventions Nos. 11, 14, 26, 81, 87, 90, 94, 95, 98, 99, 100, 111, 113, 122, 138, 143, 152, 156	
· 8 reports not received: Conventions Nos. 29, 45, 105, 114, 118, 121, 135, 151	
<b>Guinea - Bissau</b>	<b>25 reports requested</b>
· No reports received: Conventions Nos. 6, 12, 17, 18, 19, 26, 27, 29, 45, 68, 69, 73, 74, 81, 88, 91, 92, 98, 100, 105, 107, 108, 111, 138, 182	

<b>Guyana</b>	<b>33 reports requested</b>
<ul style="list-style-type: none"> <li>· 22 reports received: Conventions Nos. 2, 11, 12, 45, 81, 87, 95, 100, 105, 111, 115, 129, 131, 135, 136, 137, 138, 140, 141, 144, 150, 155</li> <li>· 11 reports not received: Conventions Nos. 19, 29, 42, 94, 97, 98, 139, 142, 166, 182, (189)</li> </ul>	
<b>Haiti</b>	<b>24 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 1, 12, 14, 17, 19, 24, 25, 29, 30, 42, 45, 77, 78, 81, 87, 90, 98, 100, 105, 106, 107, 111, 138, 182</li> </ul>	
<b>Honduras</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 27, 32, 42, 81, 87, 98, 102	
<b>Hungary</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 12, 17, 19, 24, 27, 42, 81, 87, 98, 129	
<b>Iceland</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 81, 87, 98, 102, 129	
<b>India</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 19, 27, 32, 42, 81, 118, (185), (MLC, 2006)	
<b>Indonesia</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 19, 27, 81, 87, 98, (187)	
<b>Iran, Islamic Republic of)</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 19, (MLC, 2006)	
<b>Iraq</b>	<b>20 reports requested</b>
<ul style="list-style-type: none"> <li>· 8 reports received: Conventions Nos. 17, 27, 42, 81, 98, 118, 137, 152</li> <li>· 12 reports not received: Conventions Nos. 8, 11, 19, 22, 23, 77, 78, 92, 146, 147, 167, (187)</li> </ul>	
<b>Ireland</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· 8 reports received: Conventions Nos. 11, 100, 111, 121, 122, 139, (MLC, 2006), (189)</li> <li>· 5 reports not received: Conventions Nos. 27, 32, 81, 87, 98</li> </ul>	
<b>Israel</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 19, 81, 87, 90, 97, 98, 102, 118, 141	
<b>Italy</b>	<b>9 reports requested</b>
<ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 81, 87, 98, 137, 152</li> <li>· 4 reports not received: Conventions Nos. 27, 97, 129, 143</li> </ul>	
<b>Jamaica</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· 2 reports received: Conventions Nos. 81, 152</li> <li>· 6 reports not received: Conventions Nos. 11, 19, 87, 94, 97, 98</li> </ul>	
<b>Japan</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 19, 27, 81, 87, 98, 102, 115, 121, 159	
<b>Jordan</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 81, 98, 102, 118, 119	
<b>Kazakhstan</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. (26), 81, 87, (95), 98, 111, 129, (187)	
<b>Kenya</b>	<b>12 reports requested</b>
All reports received: Conventions Nos. 27, 32, 81, 94, 97, 98, 99, 129, 131, 137, 143, (MLC, 2006)	

<b>Kiribati</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· 1 report received: Convention No. (MLC, 2006)</li> <li>· 5 reports not received: Conventions Nos. 87, 98, 100, 111, (185)</li> </ul>	
<b>Korea, Republic of</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 81, 131	
<b>Kuwait</b>	<b>3 reports requested</b>
All reports received: Conventions Nos. 81, 87, 98	
<b>Kyrgyzstan</b>	<b>30 reports requested</b>
<ul style="list-style-type: none"> <li>· 1 report received: Convention No. 29</li> <li>· 29 reports not received: Conventions Nos. 11, 17, 27, 32, 45, 77, 78, 79, 81, 87, 90, 95, 97, 98, 100, 105, 111, 119, 120, 122, 124, 131, 138, 142, 144, 154, 157, 159, 160</li> </ul>	
<b>Lao People's Democratic Republic</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 29, 100, 138, 144, (171)</li> <li>· 3 reports not received: Conventions Nos. 6, 111, 182</li> </ul>	
<b>Latvia</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 6, 81, 87, 98, 129, 131, 173	
<b>Lebanon</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· 14 reports received: Conventions Nos. 17, 19, 59, 77, 78, 90, 95, 98, 100, 111, 122, 131, 150, 152</li> <li>· 1 report not received: Convention No. 81</li> </ul>	
<b>Lesotho</b>	<b>5 reports requested</b>
<ul style="list-style-type: none"> <li>· 4 reports received: Conventions Nos. 26, 81, 87, 98</li> <li>· 1 report not received: Convention No. 135</li> </ul>	
<b>Liberia</b>	<b>4 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 81, 87, 98, 111</li> </ul>	
<b>Libya</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 53, 81, 87, 95, 98, 102, 118, 121, 130, 131</li> </ul>	
<b>Lithuania</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 27, 79, 81, 87, 90, 98, 131, 173	
<b>Luxembourg</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 26, 27, 77, 78, 79, 81, 87, 90, 98, 129	
<b>Madagascar</b>	<b>12 reports requested</b>
<ul style="list-style-type: none"> <li>· 2 reports received: Conventions Nos. 87, 98</li> <li>· 10 reports not received: Conventions Nos. 6, 26, 81, 88, 95, 97, 124, 129, 159, 173</li> </ul>	
<b>Malawi</b>	<b>18 reports requested</b>
<ul style="list-style-type: none"> <li>· 7 reports received: Conventions Nos. 11, 12, 19, 100, 111, 158, 159</li> <li>· 11 reports not received: Conventions Nos. 26, 45, 81, 87, 97, 98, 99, 129, 144, 150, 182</li> </ul>	
<b>Malaysia</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 81, 95, 98, 100, 123, 144</li> </ul>	

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**Malaysia - Malaysia - Peninsular** **4 reports requested**


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· No reports received: Conventions Nos. 11, 12, 17, 19

**Malaysia - Malaysia - Sabah** **3 reports requested**


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· No reports received: Conventions Nos. 16, 94, 97

**Malaysia - Malaysia - Sarawak** **5 reports requested**


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· No reports received: Conventions Nos. 11, 12, 16, 19, 94

**Maldives, Republic of** **10 reports requested**


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· 7 reports received: Conventions Nos. (29), (87), (98), (105), (111), (138), (182)

· 3 reports not received: Conventions Nos. (100), (185), (MLC, 2006)

**Mali** **6 reports requested**


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All reports received: Conventions Nos. 6, 26, 81, 87, 95, 98

**Malta** **34 reports requested**


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All reports received: Conventions Nos. 2, 11, 12, 13, 19, 29, 32, 42, 62, 77, 78, 81, 87, 88, 95, 96, 98, 100, 105, 108, 111, 117, 119, 124, 127, 129, 131, 135, 136, 138, 141, 148, 159, 182

**Mauritania** **9 reports requested**


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All reports received: Conventions Nos. 26, 29, 33, 81, 87, 90, 94, 95, 98

**Mauritius** **10 reports requested**


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All reports received: Conventions Nos. 26, 32, 81, 87, 94, 95, 97, 98, 99, 137

**Mexico** **15 reports requested**


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· 14 reports received: Conventions Nos. 27, 87, 90, 95, 100, 102, 111, 123, 124, 131, 134, 152, 155, 173

· 1 report not received: Convention No. (138)

**Moldova, Republic of** **11 reports requested**


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· 7 reports received: Conventions Nos. 81, 87, 95, 97, 98, 129, 131

· 4 reports not received: Conventions Nos. 92, 133, 152, 185

**Mongolia** **7 reports requested**


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All reports received: Conventions Nos. 87, (88), 98, 123, (176), (181), (MLC, 2006)

**Montenegro** **13 reports requested**


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All reports received: Conventions Nos. 27, 32, 81, 87, 90, 97, 98, 129, 131, 143, (167), (MLC, 2006), (187)

**Morocco** **9 reports requested**


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All reports received: Conventions Nos. 26, 27, 81, 94, 98, 99, 129, 131, MLC, 2006

**Mozambique** **3 reports requested**


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· No reports received: Conventions Nos. 81, 87, 98

**Myanmar** **5 reports requested**


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· 4 reports received: Conventions Nos. 6, 26, 63, 87

· 1 report not received: Convention No. 27

**Namibia** **2 reports requested**


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All reports received: Conventions Nos. 87, 98

<b>Nepal</b>	<b>4 reports requested</b>
<ul style="list-style-type: none"> <li>· 2 reports received: Conventions Nos. 100, 111</li> <li>· 2 reports not received: Conventions Nos. 98, 131</li> </ul>	
<b>Netherlands</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 27, 81, 87, 90, 94, 95, 97, 98, 124, 129, 131, 152, MLC, 2006	
<b>Netherlands - Aruba</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos. 17, 25, 113, 114, 118, 121</li> <li>· 9 reports not received: Conventions Nos. 81, 87, 90, 94, 95, 122, 131, 140, 142</li> </ul>	
<b>Netherlands - Caribbean Part of the Netherlands</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 10, 33, 81, 87, 90, 94, 95	
<b>Netherlands - Curaçao</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 10, 33, 81, 87, 90, 94, 95, (MLC, 2006)</li> </ul>	
<b>Netherlands - Sint Maarten</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 10, 33, 81, 87, 90, 94, 95	
<b>New Zealand</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 10, 26, 32, 59, 81, 97, 98, 99, (MLC, 2006)	
<b>Nicaragua</b>	<b>23 reports requested</b>
<ul style="list-style-type: none"> <li>· 14 reports received: Conventions Nos. 12, 18, 24, 25, 27, 29, 87, 98, 100, 111, 122, 131, 138, 182</li> <li>· 9 reports not received: Conventions Nos. 6, 17, 77, 78, 95, 105, 137, 169, (MLC, 2006)</li> </ul>	
<b>Niger</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 6, 81, 87, 95, 98, 131, (150), (181)	
<b>Nigeria</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· 10 reports received: Conventions Nos. 32, 81, 87, 88, 95, 97, 100, 123, 138, (MLC, 2006)</li> <li>· 9 reports not received: Conventions Nos. 11, 26, 45, 94, 98, 105, 137, 144, 185</li> </ul>	
<b>Norway</b>	<b>15 reports requested</b>
All reports received: Conventions Nos. 26, 27, 81, 87, 90, 94, 95, 97, 98, 129, 137, 143, 152, (183), (187)	
<b>Pakistan</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 27, 32, 90, 98, 100, 111, 144</li> </ul>	
<b>Panama</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 26, 27, 32, 77, 78, 81, 94, 95, 100, 111, 124, (144), 182, (189)	
<b>Papua New Guinea</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· 10 reports received: Conventions Nos. 8, 11, 12, 19, 22, 29, 42, 85, 87, 158</li> <li>· 9 reports not received: Conventions Nos. 26, 27, 99, 100, 105, 111, 122, 138, 182</li> </ul>	
<b>Paraguay</b>	<b>12 reports requested</b>
<ul style="list-style-type: none"> <li>· 11 reports received: Conventions Nos. 26, 59, 77, 78, 79, 90, 95, 99, 100, 111, 124</li> <li>· 1 report not received: Convention No. 123</li> </ul>	
<b>Peru</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 26, 27, 59, 77, 78, 79, 90, 99, 100, 111, 144, 152, 159	

<b>Philippines</b>	<b>10 reports requested</b>
All reports received: Conventions Nos. 77, 90, 94, 95, 97, 99, 100, 111, 143, 144	
<b>Poland</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 27, 29, 77, 78, 79, 90, 95, 99, 100, 111, 124, 137, 144	
<b>Portugal</b>	<b>19 reports requested</b>
All reports received: Conventions Nos. 6, 27, 77, 78, 95, 97, 100, 111, 124, 131, 137, 142, 143, 144, 156, 158, 162, 173, (189)	
<b>Qatar</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 81, 111	
<b>Romania</b>	<b>9 reports requested</b>
<ul style="list-style-type: none"> <li>· 7 reports received: Conventions Nos. 6, 95, 100, 111, 131, 137, 144</li> <li>· 2 reports not received: Conventions Nos. 27, (MLC, 2006)</li> </ul>	
<b>Russian Federation</b>	<b>15 reports requested</b>
All reports received: Conventions Nos. 27, 77, 78, 79, 90, 95, 98, 100, 111, 124, 137, 144, 152, 173, MLC, 2006	
<b>Rwanda</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· 10 reports received: Conventions Nos. 11, 12, 19, 29, 81, 87, 105, 118, 138, 182</li> <li>· 7 reports not received: Conventions Nos. 17, 26, 42, 94, 100, 111, 123</li> </ul>	
<b>Saint Kitts and Nevis</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 29, 100, 105, 111, 138, 144, 182	
<b>Saint Lucia</b>	<b>22 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 5, 7, 8, 11, 12, 16, 17, 19, 26, 29, 87, 94, 95, 97, 98, 100, 105, 108, 111, 154, 158, 182</li> </ul>	
<b>Saint Vincent and the Grenadines</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos. 11, 12, 19, 26, 29, 81, 94, 95, 100, (102), 105, 108, 111, 122, 129, 138, 144, 182, (MLC, 2006)</li> </ul>	
<b>Samoa</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 29, 100, 105, 111, 138, 182, (MLC, 2006)	
<b>San Marino</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· 1 report received: Convention No. 111</li> <li>· 18 reports not received: Conventions Nos. 29, 100, 103, 105, 119, 138, 140, 142, 143, 144, 148, 150, 151, 156, 159, 160, 161, 182</li> </ul>	
<b>Sao Tome and Principe</b>	<b>9 reports requested</b>
All reports received: Conventions Nos. 19, 29, 81, 100, 105, 111, 138, 144, 182	
<b>Saudi Arabia</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 90, 100, 111, 123	
<b>Senegal</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 6, 10, 26, 95, 99, 100, 111, 144	
<b>Serbia</b>	<b>11 reports requested</b>
<ul style="list-style-type: none"> <li>· 10 reports received: Conventions Nos. 27, 32, 90, 97, 100, 111, 131, 143, 144, 181</li> <li>· 1 report not received: Convention No. (94)</li> </ul>	

<b>Seychelles</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 11, 26, 29, 99, 100, 111, 144, 152	
<b>Sierra Leone</b>	<b>23 reports requested</b>
· No reports received: Conventions Nos. 8, 16, 17, 19, 22, 26, 29, 32, 45, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144	
<b>Singapore</b>	<b>12 reports requested</b>
· 4 reports received: Conventions Nos. 11, 12, 138, MLC, 2006	
· 8 reports not received: Conventions Nos. 19, 29, 32, 81, 94, 100, 144, 182	
<b>Slovakia</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 26, 27, 77, 78, 90, 95, 99, 100, 111, 123, 124, 144, 173	
<b>Slovenia</b>	<b>17 reports requested</b>
· 12 reports received: Conventions Nos. 27, 29, 32, 90, 97, 105, 114, 131, 144, 156, 182, (187)	
· 5 reports not received: Conventions Nos. 95, 100, 111, 143, 173	
<b>Solomon Islands</b>	<b>16 reports requested</b>
· No reports received: Conventions Nos. 11, 12, 16, 19, 26, 29, 42, 81, 94, 95, 100, 105, 108, 111, 138, 182	
<b>Somalia</b>	<b>16 reports requested</b>
· No reports received: Conventions Nos. 16, 17, 19, 22, 23, 29, 45, 84, 85, (87), 94, 95, (98), 105, 111, (182)	
<b>South Africa</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 26, 100, 111, 144	
<b>South Sudan</b>	<b>2 reports requested</b>
· No reports received: Conventions Nos. 100, 111	
<b>Spain</b>	<b>22 reports requested</b>
All reports received: Conventions Nos. 27, 77, 78, 79, 88, 90, 94, 95, 97, 100, 111, 122, 123, 124, 131, 137, 144, 152, 159, 173, 181, MLC, 2006	
<b>Sri Lanka</b>	<b>13 reports requested</b>
All reports received: Conventions Nos. 11, 18, 29, 81, 90, 95, 100, 105, 111, 131, 138, 144, 182	
<b>Sudan</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 26, 95, 100, 111	
<b>Suriname</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 27, 94, 95, 144	
<b>Swaziland</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 81, 90, 94, 95, 100, 105, 111, 123, 131, 138, 144	
<b>Sweden</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 27, 100, 111, 137, 143, 144, 152, MLC, 2006	
<b>Switzerland</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 6, 26, 27, 100, 111, 144, 173	

<b>Syrian Arab Republic</b>	<b>22 reports requested</b>
<ul style="list-style-type: none"> <li>· 21 reports received: Conventions Nos. 11, 17, 18, 19, 29, 81, 87, 94, 95, 100, 105, 107, 111, 118, 123, 124, 125, 129, 131, 138, 182</li> <li>· 1 report not received: Convention No. 144</li> </ul>	
<b>Tajikistan</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· 13 reports received: Conventions Nos. 27, 32, 77, 78, 79, 90, 95, 100, 111, 119, 120, 143, 144</li> <li>· 2 reports not received: Conventions Nos. 97, 124</li> </ul>	
<b>Tanzania, United Republic of</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 29, 59, 94, 95, 100, 105, 111, 131, 137, 144, 152	
<b>Tanzania, United Republic of - Tanzania. Zanzibar</b>	<b>1 report requested</b>
All reports received: Convention No. 97	
<b>Thailand</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 19, 29, 100, 105, 138	
<b>The former Yugoslav Republic of Macedonia</b>	<b>10 reports requested</b>
· No reports received: Conventions Nos. 27, 32, 90, 94, 97, 100, 111, 131, 143, 144	
<b>Timor-Leste</b>	<b>4 reports requested</b>
· No reports received: Conventions Nos. 29, 87, 98, 182	
<b>Togo</b>	<b>7 reports requested</b>
All reports received: Conventions Nos. 6, 26, 95, 100, 111, 143, 144	
<b>Trinidad and Tobago</b>	<b>4 reports requested</b>
· No reports received: Conventions Nos. 97, 100, 111, 144	
<b>Tunisia</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· 18 reports received: Conventions Nos. 26, 29, 77, 81, 90, 95, 99, 100, 107, 111, 114, 118, 124, 138, (144), (151), (154), 182</li> <li>· 1 report not received: Convention No. (185)</li> </ul>	
<b>Turkey</b>	<b>15 reports requested</b>
All reports received: Conventions Nos. 26, 77, 94, 95, 98, 99, 100, 111, 123, 135, 144, 152, 159, (167), (176)	
<b>Turkmenistan</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 100, 111	
<b>Tuvalu</b>	<b>1 report requested</b>
All reports received: Convention No. (MLC, 2006)	
<b>Uganda</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos. 26, 81, 105, 138, 144, 182</li> <li>· 11 reports not received: Conventions Nos. 11, 17, 19, 94, 95, 100, 111, 123, 124, 143, 162</li> </ul>	
<b>Ukraine</b>	<b>16 reports requested</b>
All reports received: Conventions Nos. 27, 32, 77, 78, 79, 81, 90, 95, 100, 111, (117), 124, 129, 131, 144, 173	
<b>United Arab Emirates</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 100, 111	

<b>United Kingdom</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos. 32, 97, 100, 111, 124, 144</li> <li>· 1 report not received: Convention No. MLC, 2006</li> </ul>	
<b>United Kingdom - Anguilla</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· 3 reports received: Conventions Nos. 87, 94, 97</li> <li>· 5 reports not received: Conventions Nos. 26, 59, 85, 99, 105</li> </ul>	
<b>United Kingdom - Bermuda</b>	<b>11 reports requested</b>
All reports received: Conventions Nos. 10, 11, 12, 17, 19, 29, 42, 59, 94, 105, (MLC, 2006)	
<b>United Kingdom - British Virgin Islands</b>	<b>8 reports requested</b>
All reports received: Conventions Nos. 10, 11, 12, 17, 26, 59, 94, 97	
<b>United Kingdom - Falkland Islands (Malvinas)</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 10, 17, 32, 59	
<b>United Kingdom - Gibraltar</b>	<b>3 reports requested</b>
All reports received: Conventions Nos. 59, 81, 100	
<b>United Kingdom - Guernsey</b>	<b>4 reports requested</b>
All reports received: Conventions Nos. 5, 10, 32, 97	
<b>United Kingdom - Isle of Man</b>	<b>6 reports requested</b>
All reports received: Conventions Nos. 5, 10, 32, 97, 99, MLC, 2006	
<b>United Kingdom - Jersey</b>	<b>5 reports requested</b>
All reports received: Conventions Nos. 5, 10, 32, 97, 99	
<b>United Kingdom - Montserrat</b>	<b>4 reports requested</b>
<ul style="list-style-type: none"> <li>· 3 reports received: Conventions Nos. 26, 59, 97</li> <li>· 1 report not received: Convention No. 95</li> </ul>	
<b>United Kingdom - St Helena</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 10, 59	
<b>United States</b>	<b>1 report requested</b>
All reports received: Convention No. 144	
<b>United States - American Samoa</b>	<b>1 report requested</b>
All reports received: Convention No. 144	
<b>United States - Guam</b>	<b>1 report requested</b>
All reports received: Convention No. 144	
<b>United States - Northern Mariana Islands</b>	<b>1 report requested</b>
All reports received: Convention No. 144	
<b>United States - Puerto Rico</b>	<b>1 report requested</b>
All reports received: Convention No. 144	
<b>United States - United States Virgin Islands</b>	<b>1 report requested</b>
All reports received: Convention No. 144	
<b>Uruguay</b>	<b>14 reports requested</b>
All reports received: Conventions Nos. 27, 32, 77, 78, 79, 90, 94, 95, 97, 100, 111, 131, 137, 144	
<b>Uzbekistan</b>	<b>2 reports requested</b>
All reports received: Conventions Nos. 100, 111	

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**Vanuatu** **7 reports requested**


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· No reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 182

**Venezuela, Bolivarian Republic of** **12 reports requested**


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All reports received: Conventions Nos. 6, 26, 27, 88, 95, 97, 100, 111, 122, 143, 144, 158

**Viet Nam** **12 reports requested**


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· 4 reports received: Conventions Nos. 29, 81, 138, 182

· 8 reports not received: Conventions Nos. 6, 27, 100, 111, 123, 124, 144, (187)

**Yemen** **21 reports requested**


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· No reports received: Conventions Nos. 16, 19, 29, 58, 59, 81, 87, 94, 95, 98, 100, 105, 111, 122, 131, 138, 144, 156, 158, 182, 185

**Zambia** **10 reports requested**


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· 9 reports received: Conventions Nos. 95, 97, 98, 100, 111, 124, 131, 144, 173

· 1 report not received: Convention No. 138

**Zimbabwe** **5 reports requested**


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All reports received: Conventions Nos. 26, 99, 100, 111, 144

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<b>Grand Total</b>
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A total of 2,083 reports (article 22) were requested,  
of which 1,386 reports (66.54 per cent) were received.

A total of 159 reports (article 35) were requested,  
of which 133 reports (83.65 per cent) were received.

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**Appendix II. Statistical table of reports received  
on ratified Conventions as at 9 December 2017**  
(article 22 of the Constitution)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
<b>As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions</b>							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
<b>As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals</b>							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
<b>As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995</b>							
1995	1252	479	38.2%	824	65.8%	988	78.9%
<b>As a result of a decision by the Governing Body (November 1993), reports were requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals</b>							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested	Reports registered for the session of the Committee of Experts	Reports registered for the session of the Conference
<b>As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals</b>				
2012	2207	809 36.7%	1497 67.8%	1742 78.9%
2013	2176	740 34.1%	1578 72.5%	1755 80.6%
2014	2251	875 38.9%	1597 70.9%	1739 77.2%
2015	2139	829 38.8%	1482 69.3%	1617 75.6%
2016	2303	902 39.2%	1600 69.5%	1781 77.3%
2017	2083	785 37.7%	1386 66.5%	

### Appendix III. List of observations made by employers' and workers' organizations

#### Afghanistan

- International Organisation of Employers (IOE)

on Convention No.  
182

#### Algeria

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87  
87, 98

#### Angola

- National Trade Union of Teachers (SINPROF); Education International (EI)
- National Union of Angolan Workers (UNTA)

on Conventions Nos  
98  
6, 26, 88, 98, 107

#### Argentina

- Association of Airline Pilots (APLA); Association of Health Workers Argentina Quilmes Affiliate (ATSA Quilmes); Confederation of Workers of Argentina (CTA Autonomous); Confederation of Workers of Argentina (CTA Workers); Federation of Workers of the Oleaginous Industrial Complex, Cotton Ginners and Related Workers of the Argentine Republic (FTCIODyARA); Press Union of Buenos Aires (SIPREBA); Latin American and Caribbean Confederation of State Workers (CLATE)
- Confederation of Workers of Argentina (CTA Autonomous)
- Confederation of Workers of Argentina (CTA Workers)
- General Confederation of Labour of the Argentine Republic (CGT RA)

on Conventions Nos  
87, 98  
17, 29, 42, 87, 98, 105, 111, 138, 144, 182  
12, 17, 19, 29, 32, 42, 87, 105, 138, 182  
12, 17, 19, 27, 29, 32, 42, 105, 138, 182

#### Armenia

- Confederation of Trade Unions of Armenia (CTUA)
- Republican Union of Employers of Armenia (RUEA)

on Conventions Nos  
17, 18, 29, 97, 105, 122, 138, 143, 182  
17, 18, 29, 97, 105, 122, 138, 143, 182

#### Australia

- Australian Council of Trade Unions (ACTU)

on Conventions Nos  
12, 19, 29, 42, 122, 137, 182

#### Austria

- Federal Chamber of Labour (BAK)

on Conventions Nos  
24, 29, 42, 102, 122, 128, 138

#### Azerbaijan

- Confederation of Trade Unions of Azerbaijan (CTUA)

on Convention No.  
111

#### Bahrain

- Bahrain Teachers Association (BTA); Education International (EI)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
111  
111  
29, 111

#### Bangladesh

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87  
87, 98

#### Belarus

- Belarusian Congress of Democratic Trade Unions (BKDP)

on Conventions Nos  
29, 87, 105, 122, 138, 182

#### Benin

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Bolivia, Plurinational State of

- Confederation of Private Employers of Bolivia (CEPB); International Organisation of Employers (IOE)
- General Confederation of Workers of Peru (CGTP)

### on Conventions Nos

26, 131, 138  
169

## Bosnia and Herzegovina

- International Trade Union Confederation (ITUC)

### on Convention No.

122

## Botswana

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

87  
87, 98

## Brazil

- General Confederation of Workers of Peru (CGTP)
- National Confederation of Industry (CNI)
- National Confederation of Industry (CNI); International Organisation of Employers (IOE)
- National Confederation of Typical State Careers (CONACATE)
- National Union of Labour Inspectors (SINAIT)
- Single Confederation of Workers (CUT)

### on Conventions Nos

169  
14, 98, 100, 106, 132, 135, 144, 151,  
154, 155, 161, 168  
14, 26, 81, 89, 95, 98, 100, 106, 111,  
132, 135, 144, 151, 154, 155, 161, 168,  
171  
98, 102, 144, 151, 154, 169  
105, 182  
29, 98, 122, 138, 144, 151, 154, 182

## Cabo Verde

- National Workers' Union of Cape Verde - Trade Union Confederation (UNTC-CS)

### on Convention No.

87

## Cambodia

- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98

## Canada

- Canadian Labour Congress (CLC)
- Quebec Employers' Council (CPQ)

### on Conventions Nos

29, 105, 122, 144  
27, 29, 105, 122, 182

## Chad

- Independent Confederation of Trade Unions of Chad (CIST); National Union of Higher Education Teachers and Researchers (SYNECS); Union of Trade Unions of Chad (UST)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98  
98

## Chile

- College of Teachers of Chile A.G.
- Single Central Organization of Workers of Chile (CUT-Chile)

### on Conventions Nos

35, 37  
19, 29, 35, 37, 105, 121, 138, 182, 189

## Colombia

- General Confederation of Labour (CGT)
- General Confederation of Workers of Peru (CGTP)
- National Employers Association of Colombia (ANDI); International Organisation of Employers (IOE)
- National Union of Health and Social Security Workers (SINDESS National – Huila Section)
- Single Confederation of Workers of Colombia (CUT); Confederation of Workers of Colombia (CTC)
- Single Confederation of Workers of Colombia (CUT); Confederation of Workers of Colombia (CTC); International Trade Union Confederation (ITUC); Trade Union Confederation of Workers of the Americas (CSA)
- Workers' Trade Union Confederation of the Oil Industry (USO)

### on Conventions Nos

12, 17, 18, 19, 24, 25, 29, 105, 136,  
138, 182  
169  
12, 17, 18, 24, 25, 29, 105, 138, 182  
29, 100, 111  
12, 17, 18, 19, 24, 25, 29, 105, 136,  
138, 182  
87, 98  
169

## Comoros

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- Workers Confederation of Comoros (CTC)

### on Conventions Nos

19, 26, 78, 81, 87, 95, 98, 99, 100, 111, 122

## Costa Rica

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- Confederation of Workers Rerum Novarum (CTRN)
- Costa Rican Confederation of Democratic Workers (CCTD)

### on Conventions Nos

29, 102, 105, 122, 144  
29, 102, 105, 122, 137, 138, 182

## Democratic Republic of the Congo

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- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

182  
182

## Denmark (Greenland)

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- Association of Fishers and Hunters in Greenland (KNAPK)
- Greenland Business Association
- Teacher's Trade Union of Greenland (IMAK)

### on Conventions Nos

122  
122  
19, 29, 105, 122

## Ecuador

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- General Confederation of Workers of Peru (CGTP)
- International Organisation of Employers (IOE)
- Public Services International (PSI) in Ecuador; National Federation of Education Workers (UNE)
- United Front of Workers (FUT)

### on Conventions Nos

169  
87  
87, 98  
102, 118, 121, 128, 130

## Egypt

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- International Trade Union Confederation (ITUC)

### on Convention No.

87

## El Salvador

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- International Organisation of Employers (IOE)
- National Business Association (ANEP); International Organisation of Employers (IOE)
- National Confederation of Salvadoran Workers (CNTS)

### on Conventions Nos

87, 144  
122, 144  
12, 29, 122

## Eritrea

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- International Organisation of Employers (IOE)

### on Conventions Nos

29, 105

## Fiji

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- Fiji Trades Union Congress (FTUC)

### on Convention No.

87

## Finland

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- Central Organization of Finnish Trade Unions (SAK)
- Commission for Local Authority Employers (KT)
- Confederation of Finnish Industries (EK)
- Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA)
- Finnish Confederation of Professionals (STTK)

### on Conventions Nos

12, 19, 27, 29, 105, 118, 121, 122, 128, 130, 137, 152, 168, 189  
122  
122  
12, 19, 27, 29, 105, 118, 121, 122, 128, 130, 137, 152, 168, 189  
12, 19, 27, 105, 118, 121, 122, 128, 130, 137, 152, 168, 189

## France

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- General Confederation of Labour - Force Ouvrière (CGT-FO)

### on Conventions Nos

122, MLC, 2006

## Gambia

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- International Trade Union Confederation (ITUC)

### on Convention No.

87

## Georgia

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- Georgian Employers' Association (GEA)
- Georgian Trade Unions Confederation (GTUC)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

87, 98  
87, 98  
87, 98

## Germany

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- Confederation of German Employers' Associations (BDA); International Organisation of Employers (IOE)
- German Shipowners' Association (VDR)

on Conventions Nos

87, 97, 98

MLC, 2006

## Ghana

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- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

## Greece

---

- Greek General Confederation of Labour (GSEE)
- Hellenic Federation of Enterprises and Industries (SEV)

on Conventions Nos

17, 29, 42, 81, 87, 98, 100, 111, 122,  
138, 144, 150, 154, 156  
98

; International Organisation of Employers (IOE)

- International Trade Union Confederation (ITUC)

98

## Guatemala

---

- Autonomous Popular Trade Union Movement; Global Unions of Guatemala
- Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos

81, 87, 97, 98, 129

87, 98, 169

87

87, 98

## Guinea

---

- International Trade Union Confederation (ITUC)

on Convention No.

87

## Haiti

---

- Confederation of Public and Private Sector Workers (CTSP)
- International Trade Union Confederation (ITUC)

on Conventions Nos

1, 12, 17, 19, 24, 25, 29, 30, 42, 45, 77,  
78, 81, 87, 90, 98, 105, 106, 107, 138,  
182

87, 98

## Honduras

---

- General Confederation of Workers (CGT); Workers' Confederation of Honduras (CTH)
- Honduran National Business Council (COHEP)
- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

27, 32, 42, 81, 87, 98, 102, 169

87, 98

## Hungary

---

- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

## India

---

- Forward Seamen's Union of India (FSUI)
- International Organisation of Employers (IOE)

on Conventions Nos

MLC, 2006

81

## Indonesia

---

- Confederation of Indonesian Prosperity Trade Union (KSBSI)  
; Confederation of Indonesian Trade Unions (KSPI)
- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

87, 98

## Iraq

---

- Conference of Iraq Federations and Workers Unions (CIFWU); Engineering Professions Union (UPEU); Federation of Workers' Councils and Unions in Iraq (FWCU); General Federation of Iraqi Trade Unions (GFITU); General Federation of Workers Unions in Iraq (GFWUI); Independent Unions Federation in Iraq (FITPUI); Iraqi Federation of Oil Unions (IFOU)

on Convention No.

98

## Ireland

---

- Irish Business and Employers Confederation (IBEC); International Organisation of Employers (IOE)

on Conventions Nos  
81, 98

## Israel

---

- General Federation of Labour in Israel (HISTADRUT)

on Convention No.  
87

## Japan

---

- Japan Business Federation (NIPPON KEIDANREN); International Organisation of Employers (IOE)
- Japanese Trade Union Confederation (JTUC-RENGO)
- Labor Union of Migrant Workers
- National Confederation of Trade Unions (ZENROREN)

on Conventions Nos  
81, 87, 98  
19, 27, 81, 87, 98, 102, 115, 121, 159  
29  
87, 98, 102

## Jordan

---

- Jordanian Federation of the Independent Trade Unions (JFITU)

on Convention No.  
98

## Kazakhstan

---

- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87  
81, 87, 95, 98, 111

## Kenya

---

- International Trade Union Confederation (ITUC)
- Kenya National Union of Teachers (KNUT); Education International (EI)

on Conventions Nos  
98  
98

## Korea, Republic of

---

- Federation of Korean Trade Unions (FKTU)
- Korean Confederation of Trade Unions (KCTU)

on Conventions Nos  
81, 131  
81, 131

## Kuwait

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Lebanon

---

- General Confederation of Lebanese Workers (CGTL)

on Convention No.  
77

## Lesotho

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98, 135

## Liberia

---

- International Trade Union Confederation (ITUC)
- International Transport Workers' Federation (ITF)

on Conventions Nos  
87, 98  
108

## Libya

---

- International Organisation of Employers (IOE)

on Convention No.  
182

## Madagascar

---

- Autonomous Trade Union of Labour Inspectors (SAIT)
- Christian Confederation of Malagasy Trade Unions (SEKRIMA)
- Confederation of Malagasy Workers (CTM)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
81, 129  
6, 26, 81, 87, 88, 95, 97, 98, 124, 129,  
159, 173  
87, 98  
182  
87, 98

## Malaysia

---

- International Trade Union Confederation (ITUC)

on Convention No.  
98

## Malaysia - Peninsular

---

- International Organisation of Employers (IOE)

on Convention No.  
19

## Malaysia - Sarawak

---

- International Organisation of Employers (IOE)

on Convention No.  
19

## Mali

---

- Confederation of Workers' Union of Mali (CSTM)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
26, 87, 95, 144  
87, 98

## Marshall Islands

---

- International Transport Workers' Federation (ITF)

on Convention No.  
185

## Mauritania

---

- Free Confederation of Mauritanian Workers (CLTM)
- General Confederation of Workers of Mauritania (CGTM)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
26, 33, 81, 87, 90, 94, 95, 98  
26, 29, 33, 81, 87, 94, 95, 98  
29  
29, 87, 98

## Mauritius

---

- Business Mauritius; International Organisation of Employers (IOE)
- Confederation of Private Sector Workers (CTSP)

on Conventions Nos  
87, 98  
26, 29

## Mexico

---

- Confederation of Employers of the Mexican Republic (COPARMEX)
- Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)
- IndustriALL Global Union (IndustriALL)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
27, 87, 90, 95, 123, 124, 131, 152, 155,  
173  
27, 87, 90, 95, 123, 124, 131, 152, 155,  
173  
169  
87

## Moldova, Republic of

---

- National Confederation of Trade Unions of Moldova (CNSM)

on Conventions Nos  
81, 87, 95, 97, 98, 129, 131

## Montenegro

---

- International Trade Union Confederation (ITUC)
- Montenegrin Employer Federation (MEF); International Organisation of Employers (IOE)

on Conventions Nos  
87, 98  
98

## Morocco

---

- Democratic Confederation of Labour (CDT)
- General Confederation of Enterprises of Morocco (CGEM)
- International Trade Union Confederation (ITUC)
- Moroccan Labour Union (UMT)

on Conventions Nos  
26, 27, 81, 94, 98, 99, 129, 131  
26, 81  
98  
26, 27, 81, 94, 98, 99, 129, 131

## Myanmar

---

- International Trade Union Confederation (ITUC)

on Convention No.  
87

## Namibia

---

- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Nepal

---

- International Trade Union Confederation (ITUC)

on Convention No.  
98

## Netherlands

---

- Confederation of Netherlands Industry and Employers (VNO-NCW); National Federation of Christian Trade Unions (CNV); Netherlands Trade Union Confederation (FNV); Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP)
- National Federation of Christian Trade Unions (CNV); Netherlands Trade Union Confederation (FNV); Trade Union Federation for Professionals (VCP)
- Royal Association of Dutch SME Entrepreneurs (MKB Netherlands); Trade Union Federation for Professionals (VCP)

### on Conventions Nos

111  
81, 87, 94, 95, 97, 98, 129, 131, 152  
111

## Nigeria

---

- International Trade Union Confederation (ITUC)
- Nigeria Labour Congress (NLC)

### on Conventions Nos

87, 98  
26, 87

## Norway

---

- Confederation of Norwegian Enterprise (NHO)
- Norwegian Confederation of Trade Unions (LO)

### on Conventions Nos

137  
26, 81, 87, 94, 97, 98, 129, 137, 183, 187

## Pakistan

---

- International Trade Union Confederation (ITUC)
- Pakistan Workers' Federation (PWF)

### on Conventions Nos

98  
87, 98, 100, 111, 138, 182

## Paraguay

---

- Central Confederation of Workers Authentic (CUT-A)
- International Organisation of Employers (IOE)
- International Trade Union Confederation (ITUC)

### on Conventions Nos

29, 111  
29  
29

## Peru

---

- Autonomous Workers' Confederation of Peru (CATP)
- Coordination of Trade Union Federations of Peru
- Federation of municipal workers, employees and labourers in Peru (FTM-Peru)
- General Confederation of Workers of Peru (CGTP)

### on Conventions Nos

26, 59, 99, 100, 144, 152, 159  
100  
111  
169

## Poland

---

- Independent and Self-Governing Trade Union "Solidarnosc"
- International Organisation of Employers (IOE)

### on Conventions Nos

95, 100  
29

## Portugal

---

- Confederation of Portuguese Industry (CIP)
- Confederation of Portuguese Industry (CIP); International Organisation of Employers (IOE)
- General Confederation of Portuguese Workers - National Trade Unions (CGTP-IN)
- General Workers' Union (UGT)
- Trade Union Association of Civil Servants of the Authority for Food and Economic Security (ASF-ASAE)

### on Conventions Nos

6, 95, 97, 100, 111, 131, 143, 162, 173, 144  
6, 77, 78, 95, 97, 100, 111, 124, 131, 142, 143, 156, 158, 162, 173, 189  
6, 27, 77, 78, 95, 97, 100, 111, 124, 131, 142, 143, 144, 162, 173, 189  
81, 111, 155

## Qatar

---

- International Trade Union Confederation (ITUC)

### on Convention No.

81

## Romania

---

- Block of National Trade Unions (BNS)

### on Convention No.

102

## Russian Federation

---

- Confederation of Labour of Russia (KTR)

### on Conventions Nos

98, 100, 111, 137, 144, 152, MLC, 2006

## Serbia

---

- Confederation of Autonomous Trade Unions of Serbia (CATUS)
- Serbian Association of Employers (SAE)
- Trade Union Confederation 'Nezavisnost'

## Seychelles

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- Association of Seychelles Employers
- Seychelles Federation of Workers' Unions (SFWU)

## Somalia

---

- International Trade Union Confederation (ITUC)

## South Africa

---

- National Economic Development and Labour Council (NEDLAC)
- Solidarity Trade Union (South Africa)

## Spain

---

- General Union of Workers (UGT)
- International Organisation of Employers (IOE); Spanish Confederation of Employers' Organizations (CEOE)
- Spanish Confederation of Employers' Organizations (CEOE); International Organisation of Employers (IOE)
- Trade Union Confederation of Workers' Commissions (CCOO)

## Switzerland

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- Swiss Federation of Trade Unions (USS/SGB)

## Thailand

---

- International Trade Union Confederation (ITUC)

## Turkey

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- Confederation of Public Servants Trade Unions (MEMUR-SEN)
- Confederation of Turkish Trade Unions (TÜRK-İS)
- Education and Science Workers' Union of Turkey (EGİTİM SEN); Education International (EI)
- International Trade Union Confederation (ITUC)
- Turkish Confederation of Employers' Associations (TİSK)
- Turkish Confederation of Employers' Associations (TİSK); International Organisation of Employers (IOE)
- Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen)

## Ukraine

---

- Confederation of Free Trade Unions of Ukraine (KVPU)
- Federation of Trade Unions of Ukraine (FPU)

## United Kingdom

---

- Trades Union Congress (TUC)

## Uruguay

---

- National Chamber of Commerce and Services of Uruguay (CNCS); Chamber of Industries of Uruguay (CIU); International Organisation of Employers (IOE)

### on Conventions Nos

144  
27, 32, 90, 94, 97, 100, 111, 131, 143,  
144, 181  
27, 32, 90, 100, 111, 131, 144, 181

### on Conventions Nos

11, 26, 29, 99, 100, 111, 144, 152  
11, 26, 29, 99, 100, 111, 144, 152

### on Conventions Nos

87, 98

### on Conventions Nos

100, 111  
111

### on Conventions Nos

77, 78, 79, 88, 90, 94, 95, 97, 100, 111,  
122, 123, 124, 131, 137, 144, 159, 173,  
181, MLC, 2006  
88, 122, 181

95, 100, 111, 131

27, 77, 78, 79, 88, 90, 94, 95, 97, 100,  
111, 122, 123, 124, 131, 137, 144, 152,  
159, 173, 181, MLC, 2006

### on Conventions Nos

100, 111, 144, 173

### on Convention No.

29

### on Conventions Nos

135  
26, 77, 94, 95, 98, 99, 100, 111, 123,  
135, 144, 152, 159  
98, 111

87, 98, 135

77, 95, 159

98, 100, 111, 135

98, 111, 135

### on Conventions Nos

29, 87, 98, 100, 105, 111  
81, 95, 129

### on Conventions Nos

97, 100, 111, 144

### on Conventions Nos

98, 144

## Uzbekistan

---

- International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

### on Conventions Nos

100, 111

## Venezuela, Bolivarian Republic of

---

- Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS); International Organisation of Employers (IOE)
- General Confederation of Labour (CGT); Confederation of Autonomous Trade Unions (CODESA); Confederation of Workers of Venezuela (CTV)
- General Confederation of Labour (CGT); Confederation of Autonomous Trade Unions (CODESA); Confederation of Workers of Venezuela (CTV); National Union of Workers of Venezuela (UNETE)
- Independent Trade Union Alliance Confederation of Workers (CTASI)

### on Conventions Nos

26, 29, 87, 88, 105, 122, 144, 158

111

6, 26, 88, 95, 97, 98, 100, 111, 122, 143, 144, 158

6, 26, 95, 111, 122, 144

## Yemen

---

- International Trade Union Confederation (ITUC)

### on Convention No.

95

## Zambia

---

- International Trade Union Confederation (ITUC)

### on Convention No.

98

## Zimbabwe

---

- Zimbabwe Congress of Trade Unions (ZCTU)

### on Conventions Nos

26, 99, 100, 111, 144

**Appendix IV. Summary of information supplied by governments  
with regard to the obligation to submit the instruments adopted by  
the International Labour Conference to the competent authorities**

Article 19 of the Constitution of the International Labour Organisation prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions, the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of any action taken by them.

In accordance with article 23 of the Constitution, a summary of the information communicated by member States in pursuance of article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures to rationalize and simplify proceedings. As a result, the summarized information appears in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The following summary contains the most recent information on the submission to the competent authorities of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted at the 103rd Session of the Conference (June 2014), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted at the 104th Session of the Conference (June 2015), as well as the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session (June 2017).

The summarized information also consists of communications that were forwarded to the Director-General of the International Labour Office after the closure of the 106th Session of the Conference (June 2017) and which could not therefore be laid before the Conference at that session.

**Armenia.** The instruments adopted by the Conference at its 103rd Session were submitted to the National Assembly on 26 May 2016.

**Canada.** The instruments adopted by the Conference at its 103rd and 104th Sessions were submitted to the Parliament of Canada on 9 June 2017.

**Czech Republic.** Recommendation No. 204 was submitted to the Chamber of Deputies of the Parliament and to the Senate of the Parliament on 15 and 16 November 2016, respectively.

**Denmark.** Recommendation No. 205 was submitted to the Danish Parliament on 27 September 2017.

**Egypt.** Recommendation No. 204 was submitted to the House of Representatives (Majlis Al-Nuwab) on 8 September 2015.

**Ethiopia.** The instruments adopted by the Conference at its 103rd and 104th Sessions were submitted to the House of Peoples' Representatives on 28 September 2017.

**Greece.** Recommendation No. 204 was submitted to the Hellenic Parliament on 20 February 2017.

**Guatemala.** Recommendation No. 205 was submitted to the Congress of the Republic on 24 November 2017.

**Israel.** Recommendation No. 205 was submitted to the Knesset on 30 October 2017.

**Italy.** Recommendation No. 204 was submitted to Parliament on 29 February 2016.

**Republic of Korea.** Recommendation No. 205 was submitted to the National Assembly on 24 August 2017.

**Luxembourg.** Recommendation No. 205 was submitted to the Chamber of Deputies on 19 September 2017.

**Mauritius.** Recommendation No. 204 was submitted to the National Assembly on 15 November 2016.

**Myanmar.** Recommendation No. 204 was submitted to Parliament on 6 June 2017.

**Norway.** Recommendation No. 205 was submitted to Parliament on 12 October 2017.

**New Zealand.** Recommendation No. 205 was submitted to the House of Representatives on 11 August 2017.

**Portugal.** Recommendation No. 204 was submitted to the Assembly of the Republic on 12 December 2016.

**Senegal.** Recommendation No. 204 was submitted to the National Assembly on 6 December 2016.

**Slovenia.** Recommendation No. 205 was submitted to the National Assembly on 19 September 2017.

**Sri Lanka.** Recommendation No. 204 was submitted to Parliament on 21 December 2016.

**Ukraine.** Recommendation No. 204 was submitted to Parliament on 25 September 2015.

**United Kingdom.** Recommendation No. 204 was submitted to Parliament on 20 December 2016.

*Zimbabwe.* Recommendation No. 205 was submitted to Parliament on 26 October 2017.

The Committee has deemed it necessary, in certain cases, to request additional information on the identity of the competent authorities to which the instruments adopted by the Conference have been submitted, as well as other particulars required by the questionnaire at the end of the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, as revised in March 2005.

**Appendix V. Information supplied by governments with regard to the  
obligation to submit Conventions and Recommendations  
to the competent authorities**

(31st to 106th Sessions of the International Labour Conference, 1948-2017)

*Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.*

*Account has been taken of the date of admission or readmission of member States to the ILO for determining the sessions of the Conference whose texts are taken into consideration.*

*The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972), 73rd Session (June 1987), 93rd Session (June 2005), 97th Session (June 2008), 98th Session (June 2009), 102nd Session (June 2013) and 105th Session (June 2016).*

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Afghanistan</b>	
31-56, 58-72, 74-92, 94, 95	96, 99-101, 103, 104, 106
<b>Albania</b>	
79-81, 82 (C176, R183), 83, 84 (C178, P147, R186), 85, 87, 88, 90 (P155), 91, 94, 95 (C187, R197)	78, 82 (P081), 84 (C179, C180, R185, R187), 86, 89, 90 (R193, R194), 92, 95 (R198), 96, 99-101, 103, 104, 106
<b>Algeria</b>	
47-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Angola</b>	
61-72, 74-78, 79 (C173), 80, 81, 82 (R183, C176), 83-85, 87-90, 96	79 (R180), 82 (P081), 86, 91, 92, 94, 95, 99-101, 103, 104, 106
<b>Antigua and Barbuda</b>	
68-72, 74-82, 84, 87, 94, 100	83, 85, 86, 88-92, 95, 96, 99, 101, 103, 104, 106
<b>Argentina</b>	
31-56, 58-72, 74-90, 92, 94-96, 99-101, 103	91, 104, 106
<b>Armenia</b>	
80-92, 94-96, 99-101	103, 104, 106
<b>Australia</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Austria</b>	
31-56, 58-72, 74-92, 94-96, 99	100, 101, 103, 104, 106
<b>Azerbaijan</b>	
79 (C173), 80-82, 85-88, 91, 92	79 (R180), 83, 84, 89, 90, 94-96, 99-101, 103, 104, 106

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Bahamas</b>	61-72, 74-84, 87, 91, 94	85, 86, 88-90, 92, 95, 96, 99-101, 103, 104, 106
<b>Bahrain</b>	63-72, 74-87	88-92, 94-96, 99-101, 103, 104, 106
<b>Bangladesh</b>	58-72, 74-76, 77 (C171, R178), 78, 80, 84, 85 (C181), 87, 91, 94	77 (C170, P089, R177), 79, 81-83, 85 (R188), 86, 88-90, 92, 95, 96, 99-101, 103, 104, 106
<b>Barbados</b>	51-56, 58-72, 74-92, 94-96, 99	100, 101, 103, 104, 106
<b>Belarus</b>	37-56, 58-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Belgium</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Belize</b>	68-72, 74-76, 84, 87, 88, 94	77-83, 85, 86, 89-92, 95, 96, 99-101, 103, 104, 106
<b>Benin</b>	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Bolivia, Plurinational State of</b>	31-56, 58-72, 74-79, 80 (C174), 81 (C175), 82 (C176), 83 (C177), 84 (C178, C179, C180), 85 (C181), 87, 88 (C183), 89 (C184), 91, 100	80 (R181), 81 (R182), 82 (P081, R183), 83 (R184), 84 (P147, R185, R186, R187), 85 (R188), 86, 88 (R191), 89 (R192), 90, 92, 94-96, 99, 101, 103, 104, 106
<b>Bosnia and Herzegovina</b>	80-92, 94-96, 99-101, 103 (R203), 104	103 (P029), 106
<b>Botswana</b>	64-72, 74-92, 94-96, 99, 100	101, 103, 104, 106
<b>Brazil</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Brunei Darussalam</b>		96, 99-101, 103, 104, 106
<b>Bulgaria</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Burkina Faso</b>	
45-56, 58-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Burundi</b>	
47-56, 58-72, 74-92, 95	94, 96, 99-101, 103, 104, 106
<b>Cabo Verde</b>	
65-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Cambodia</b>	
53-56, 58-72, 74-92, 94-96, 99-101, 103 (R203), 104	103 (P029), 106
<b>Cameroon</b>	
44-56, 58-72, 74-92, 94-96, 101	99, 100, 103, 104, 106
<b>Canada</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Central African Republic</b>	
45-56, 58-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Chad</b>	
45-56, 58-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Chile</b>	
31-56, 58-72, 74-82, 87, 95 (C187, R197), 100	83-86, 88-92, 94, 95 (R198), 96, 99, 101, 103, 104, 106
<b>China</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Colombia</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Comoros</b>	
65-72, 74-78, 87	79-86, 88-92, 94-96, 99-101, 103, 104, 106
<b>Congo</b>	
45-53, 54 (C131, C132), 55, 56, 58 (C138, R146), 59, 60 (C142, R150), 61, 62, 63 (C148, C149, R157), 64-66, 67 (C154, C155, C156), 68 (C158), 71 (C160, C161), 74, 75 (C167, C168), 76, 84, 87, 91, 94, 96	54 (R135, R136), 58 (C137, R145), 60 (C141, C143, R149, R151), 63 (R156), 67 (R163, R164, R165), 68 (C157, P110, R166), 69, 70, 71 (R170, R171), 72, 75 (R175, R176), 77-83, 85, 86, 88-90, 92, 95, 99-101, 103, 104, 106
<b>Cook Islands</b>	
	104, 106

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Costa Rica</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 104	<b>103 (R203), 106</b>
<b>Côte d'Ivoire</b>	
45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Croatia</b>	
80-85, 87, 91, 94	<b>86, 88-90, 92, 95, 96, 99-101, 103, 104, 106</b>
<b>Cuba</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Cyprus</b>	
45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Czech Republic</b>	
80-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Democratic Republic of the Congo</b>	
45-56, 58-72, 74-92, 94-96	<b>99-101, 103, 104, 106</b>
<b>Denmark</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 106	<b>103 (R203), 104</b>
<b>Djibouti</b>	
64-72, 74-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Dominica</b>	
68-72, 74-79, 87	<b>80-86, 88-92, 94-96, 99-101, 103, 104, 106</b>
<b>Dominican Republic</b>	
31-56, 58-72, 74-92, 94, 95, 99, 100	<b>96, 101, 103, 104, 106</b>
<b>Ecuador</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 104	<b>103 (R203), 106</b>
<b>Egypt</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>El Salvador</b>	
31-56, 58-61, 63 (C149), 64, 67 (R164, R165, C155, C156), 69 (R168, C159), 71, 72, 74-81, 87, 90 (P155)	<b>62, 63 (R156, R157, C148), 65, 66, 67 (R163, C154), 68, 69 (R167), 70, 82-86, 88, 89, 90 (R193, R194), 91, 92, 94-96, 99-101, 103, 104, 106</b>

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Equatorial Guinea</b>	67-72, 74-79, 84, 87	80-83, 85, 86, 88-92, 94-96, 99-101, 103, 104, 106
<b>Eritrea</b>	80-92, 94-96, 99-101	103, 104, 106
<b>Estonia</b>	79-92, 94-96, 99-101, 103, 104	106
<b>Ethiopia</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Fiji</b>	59-72, 74-82, 84, 85, 87, 89, 92, 94	83, 86, 88, 90, 91, 95, 96, 99-101, 103, 104, 106
<b>Finland</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>France</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Gabon</b>	45-56, 58-72, 74-81, 82 (C176), 83 (C177), 84, 85 (C181), 87, 89 (C184), 91, 94	82 (P081, R183), 83 (R184), 85 (R188), 86, 88, 89 (R192), 90, 92, 95, 96, 99-101, 103, 104, 106
<b>Gambia</b>	82-92, 94-96	99-101, 103, 104, 106
<b>Georgia</b>	80-92, 94-96, 99-101	103, 104, 106
<b>Germany</b>	34-56, 58-72, 74-76, 77 (C170, R177), 78-92, 94-96, 99-101, 104	77 (C171, P089, R178), 103, 106
<b>Ghana</b>	40-56, 58-72, 74-92, 94-96, 99-101, 104	103, 106
<b>Greece</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Grenada</b>	66-72, 74-92, 94, 95	96, 99-101, 103, 104, 106
<b>Guatemala</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Guinea</b>	43-56, 58-72, 74-83, 87, 95 (R197, C187), 100	84-86, 88-92, 94, 95 (R198), 96, 99, 101, 103, 104, 106
<b>Guinea - Bissau</b>	63-72, 74-88, 94	89-92, 95, 96, 99-101, 103, 104, 106
<b>Guyana</b>	50-56, 58-72, 74-92, 94, 95, 100	96, 99, 101, 103, 104, 106
<b>Haiti</b>	31-56, 58-66, 67 (C156, R165), 69-72, 74, 75 (C167), 87	67 (C154, C155, R163, R164), 68, 75 (C168, R175, R176), 76-86, 88-92, 94-96, 99-101, 103, 104, 106
<b>Honduras</b>	38-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Hungary</b>	31-56, 58-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Iceland</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>India</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Indonesia</b>	33-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Iran, Islamic Republic of</b>	31-56, 58-72, 74-89, 90 (R193, R194), 91, 92, 94-96	90 (P155), 99-101, 103, 104, 106
<b>Iraq</b>	31-56, 58-72, 74-87, 88 (C183), 89, 90 (P155), 91, 94, 95 (C187, R197), 96 (C188), 100 (C189)	88 (R191), 90 (R193, R194), 92, 95 (R198), 96 (R199), 99, 100 (R201), 101, 103, 104, 106
<b>Ireland</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Israel</b>	32-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	
<b>Italy</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Jamaica</b>	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Japan</b>	35-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Jordan</b>	39-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Kazakhstan</b>	82 (C176, R183), 87, 88, 91	80, 81, 82 (P081), 83-86, 89, 90, 92, 94-96, 99-101, 103, 104, 106
<b>Kenya</b>	48-56, 58-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Kiribati</b>	94	88-92, 95, 96, 99-101, 103, 104, 106
<b>Korea, Republic of</b>	79-92, 94-96, 99-101, 103, 104, 106	
<b>Kuwait</b>	45-56, 58-72, 74-76, 78, 79, 80 (C174), 81-85, 87, 88, 90, 91	77, 80 (R181), 86, 89, 92, 94-96, 99-101, 103, 104, 106
<b>Kyrgyzstan</b>	87, 89	79-86, 88, 90-92, 94-96, 99-101, 103, 104, 106
<b>Lao People's Democratic Republic</b>	48-56, 58-72, 74-81, 82 (R183, C176), 83-92, 94-96, 99, 100, 103	82 (P081), 101, 104, 106
<b>Latvia</b>	79-92, 94-96, 99-101, 103, 104	106
<b>Lebanon</b>	32-56, 58-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Lesotho</b>	66-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Liberia</b>	31-56, 58-72, 74-76, 77 (C170, C171, R177, R178), 78-81, 82 (C176, R183), 83-87, 91, 94	77 (P089), 82 (P081), 88-90, 92, 95, 96, 99-101, 103, 104, 106
<b>Libya</b>	35-56, 58-72, 74-82, 87	83-86, 88-92, 94-96, 99-101, 103, 104, 106

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Lithuania</b>	
79-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Luxembourg</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	
<b>Madagascar</b>	
45-56, 58-72, 74-91, 94-96, 100	<b>92, 99, 101, 103, 104, 106</b>
<b>Malawi</b>	
49-56, 58-72, 74-92, 94-96	<b>99-101, 103, 104, 106</b>
<b>Malaysia</b>	
41-56, 58-72, 74-92, 94, 95 (C187, R197)	<b>95 (R198), 96, 99-101, 103, 104, 106</b>
<b>Maldives, Republic of</b>	
	<b>99-101, 103, 104, 106</b>
<b>Mali</b>	
45-56, 58-72, 74-83, 84 (C178, C179, C180, R185, R186, R187), 85, 87-91, 103	<b>84 (P147), 86, 92, 94-96, 99-101, 104, 106</b>
<b>Malta</b>	
49-56, 58-72, 74-92, 94, 95	<b>96, 99-101, 103, 104, 106</b>
<b>Marshall Islands</b>	
	<b>99-101, 103, 104, 106</b>
<b>Mauritania</b>	
45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Mauritius</b>	
53-56, 58-72, 74-92, 94-96, 99-101, 103, 104	<b>106</b>
<b>Mexico</b>	
31-56, 58-72, 74-92, 94, 95 (R198), 99, 101	<b>95 (C187, R197), 96, 100, 103, 104, 106</b>
<b>Moldova, Republic of</b>	
79-91, 95 (C187, R197), 104	<b>92, 94, 95 (R198), 96, 99-101, 103, 106</b>
<b>Mongolia</b>	
52-56, 58-72, 74-81, 82 (C176, R183), 83-92, 94-96, 99-101	<b>82 (P081), 103, 104, 106</b>
<b>Montenegro</b>	
96, 99-101, 103, 104	<b>106</b>

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Morocco</b>	
39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Mozambique</b>	
61-72, 74-82, 87, 104	83-86, 88-92, 94-96, 99-101, 103, 106
<b>Myanmar</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Namibia</b>	
65-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Nepal</b>	
51-56, 58-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Netherlands</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>New Zealand</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	
<b>Nicaragua</b>	
40-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Niger</b>	
45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Nigeria</b>	
45-56, 58-72, 74-92, 94, 95, 100, 104	96, 99, 101, 103, 106
<b>Norway</b>	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	
<b>Oman</b>	
81-92, 95 (R197, R198), 99	94, 95 (C187), 96, 100, 101, 103, 104, 106
<b>Pakistan</b>	
31-56, 58-72, 74-80, 87, 91	81-86, 88-90, 92, 94-96, 99-101, 103, 104, 106
<b>Palau</b>	
	101, 103, 104, 106
<b>Panama</b>	
31-56, 58-72, 74-87, 88 (R191), 89 (R192), 90 (R193, R194), 92, 94, 95 (R197, R198), 96 (R199), 99-101, 103, 104	88 (C183), 89 (C184), 90 (P155), 91, 95 (C187), 96 (C188), 106

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Papua New Guinea</b>	61-72, 74-87	88-92, 94-96, 99-101, 103, 104, 106
<b>Paraguay</b>	40-56, 58-72, 74-92, 94-96, 100	99, 101, 103, 104, 106
<b>Peru</b>	31-56, 58-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Philippines</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Poland</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Portugal</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Qatar</b>	58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Romania</b>	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Russian Federation</b>	37-56, 58-72, 74-88, 91, 94, 95 (C187, R197), 103, 104	89, 90, 92, 95 (R198), 96, 99-101, 106
<b>Rwanda</b>	47-56, 58-72, 74-79, 81, 85, 87, 95 (C187, R197)	80, 82-84, 86, 88-92, 94, 95 (R198), 96, 99-101, 103, 104, 106
<b>Saint Kitts and Nevis</b>	84, 87, 94	83, 85, 86, 88-92, 95, 96, 99-101, 103, 104, 106
<b>Saint Lucia</b>	67 (C154, R163), 68 (C158, R166), 87	66, 67 (C155, C156, R164, R165), 68 (C157, P110), 69-72, 74-86, 88-92, 94-96, 99-101, 103, 104, 106
<b>Saint Vincent and the Grenadines</b>	84, 86, 87, 94	82, 83, 85, 88-92, 95, 96, 99-101, 103, 104, 106
<b>Samoa</b>	94	95, 96, 99-101, 103, 104, 106

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>San Marino</b>	
68-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Sao Tome and Principe</b>	
68-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Saudi Arabia</b>	
61-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Senegal</b>	
45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Serbia</b>	
89-92, 94-96, 99-101, 103	104, 106
<b>Seychelles</b>	
63-72, 74-88, 94	89-92, 95, 96, 99-101, 103, 104, 106
<b>Sierra Leone</b>	
45-56, 58-61, 62 (C145, C147, R153, R155)	62 (C146, R154), 63-72, 74-92, 94-96, 99-101, 103, 104, 106
<b>Singapore</b>	
50-56, 58-72, 74-92, 94-96, 99-101, 104	103, 106
<b>Slovakia</b>	
80-92, 94-96, 99-101, 103, 104	106
<b>Slovenia</b>	
79-92, 94-96, 99-101, 103, 104, 106	
<b>Solomon Islands</b>	
74, 87	70-72, 75-86, 88-92, 94-96, 99-101, 103, 104, 106
<b>Somalia</b>	
45-56, 58-72, 74, 75, 87	76-86, 88-92, 94-96, 99-101, 103, 104, 106
<b>South Africa</b>	
81, 82 (C176, R183), 83-92, 94-96, 99-101	103, 104, 106
<b>South Sudan</b>	
	101, 103, 104, 106
<b>Spain</b>	
39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Sri Lanka</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Sudan</b>	39-56, 58-72, 74-80, 81 (R182), 82-92, 95, 96, 99-101, 103, 104	81 (C175), 94, 106
<b>Suriname</b>	61-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Swaziland</b>	60-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Sweden</b>	31-56, 58-72, 74-92, 94-96, 99, 101, 103, 104	100, 106
<b>Switzerland</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Syrian Arab Republic</b>	31-56, 58-65, 67, 68, 69 (C159, R167), 71, 72, 74-76, 77 (C170, R177), 84, 87-89, 90 (P155), 94	66, 69 (R168), 70, 77 (C171, P089, R178), 78-83, 85, 86, 90 (R193, R194), 91, 92, 95, 96, 99-101, 103, 104, 106
<b>Tajikistan</b>	81-92, 94-96, 99-101	103, 104, 106
<b>Tanzania, United Republic of</b>	46-56, 58-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Thailand</b>	31-56, 58-72, 74-92, 94-96, 99, 100 (R201), 101, 103 (R203), 104	100 (C189), 103 (P029), 106
<b>The former Yugoslav Republic of Macedonia</b>	80-83, 85, 87, 88, 95 (C187, R197)	84, 86, 89-92, 94, 95 (R198), 96, 99-101, 103, 104, 106
<b>Timor-Leste</b>	92, 94-96	99-101, 103, 104, 106
<b>Togo</b>	44-56, 58-72, 74-89, 90 (P155), 94, 95 (C187, R197), 99, 100 (C189), 101, 103, 104	90 (R193, R194), 91, 92, 95 (R198), 96, 100 (R201), 106
<b>Tonga</b>		106

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Trinidad and Tobago</b>	47-56, 58-72, 74-92, 94-96, 99-101	103, 104, 106
<b>Tunisia</b>	39-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Turkey</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Turkmenistan</b>	81-92, 94-96, 99, 100	101, 103, 104, 106
<b>Tuvalu</b>		99-101, 103, 104, 106
<b>Uganda</b>	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Ukraine</b>	37-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>United Arab Emirates</b>	58-72, 74-92, 95, 96	94, 99-101, 103, 104, 106
<b>United Kingdom</b>	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	106
<b>United States</b>	66-72, 74-92, 94-96, 99-101, 103, 104	106
<b>Uruguay</b>	31-56, 58-72, 74-89, 90 (R193, R194), 91, 92, 95 (R197, R198), 100	90 (P155), 94, 95 (C187), 96, 99, 101, 103, 104, 106
<b>Uzbekistan</b>	80-92, 94-96, 99-101, 103	104, 106
<b>Vanuatu</b>		91, 92, 94-96, 99-101, 103, 104, 106
<b>Venezuela, Bolivarian Republic of</b>	41-56, 58-72, 74-92, 94-96, 99-101, 103	104, 106
<b>Viet Nam</b>	79-92, 94-96, 99-101, 103, 104	106

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Yemen</b>	49-56, 58-72, 74-87, 88 (C183), 89 (C184), 91, 95 (C187)	88 (R191), 89 (R192), 90, 92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106
<b>Zambia</b>	49-56, 58-72, 74-92, 94-96	99-101, 103, 104, 106
<b>Zimbabwe</b>	66-72, 74-92, 94-96, 99-101, 103, 104, 106	

**Appendix VI. Overall position of member States with regard  
to the submission to the competent authorities of the  
instruments adopted by the Conference  
(as at 9 December 2017)**

Sessions of the ILC	Number of States in which, according to the information supplied by the Government:			Number of ILO member States at the time of the session
	All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	

*All the instruments adopted between the 31st and the 53rd Sessions have been submitted to the competent authorities by member States*

<b>54th</b> (June 1970)	119	1	0	<b>120</b>
<b>55th</b> (October 1970)	120	0	0	<b>120</b>
<b>56th</b> (June 1971)	120	0	0	<b>120</b>
<b>58th</b> (June 1973)	122	1	0	<b>123</b>
<b>59th</b> (June 1974)	125	0	0	<b>125</b>
<b>60th</b> (June 1975)	125	1	0	<b>126</b>
<b>61st</b> (June 1976)	131	0	0	<b>131</b>
<b>62nd</b> (October 1976)	129	1	1	<b>131</b>
<b>63rd</b> (June 1977)	131	2	1	<b>134</b>
<b>64th</b> (June 1978)	134	0	1	<b>135</b>
<b>65th</b> (June 1979)	135	0	2	<b>137</b>
<b>66th</b> (June 1980)	138	0	4	<b>142</b>
<b>67th</b> (June 1981)	138	4	1	<b>143</b>
<b>68th</b> (June 1982)	142	2	3	<b>147</b>
<b>69th</b> (June 1983)	143	2	3	<b>148</b>
<b>70th</b> (June 1984)	143	0	6	<b>149</b>
<b>71st</b> (June 1985)	145	1	3	<b>149</b>
<b>72nd</b> (June 1986)	145	0	4	<b>149</b>
<b>74th</b> (October 1987)	147	0	2	<b>149</b>
<b>75th</b> (June 1988)	144	2	3	<b>149</b>
<b>76th</b> (June 1989)	142	0	5	<b>147</b>
<b>77th</b> (June 1990)	135	4	8	<b>147</b>
<b>78th</b> (June 1991)	140	0	9	<b>149</b>
<b>79th</b> (June 1992)	143	2	11	<b>156</b>
<b>80th</b> (June 1993)	151	2	14	<b>167</b>
<b>81st</b> (June 1994)	154	2	15	<b>171</b>
<b>82nd</b> (June 1995)	147	9	17	<b>173</b>
<b>83rd</b> (June 1996)	147	2	25	<b>174</b>
<b>84th</b> (October 1996)	153	3	18	<b>174</b>
<b>85th</b> (June 1997)	148	3	23	<b>174</b>
<b>86th</b> (June 1998)	141	0	33	<b>174</b>
<b>87th</b> (June 1999)	173	0	1	<b>174</b>
<b>88th</b> (June 2000)	142	4	29	<b>175</b>
<b>89th</b> (June 2001)	136	4	35	<b>175</b>
<b>90th</b> (June 2002)	130	8	37	<b>175</b>

Sessions of the ILC	Number of States in which, according to the information supplied by the Government:			Number of ILO member States at the time of the session
	All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
<b>91st</b> (June 2003)	144	0	32	<b>176</b>
<b>92nd</b> (June 2004)	131	0	46	<b>177</b>
<b>94th</b> (February 2006)	145	0	33	<b>178</b>
<b>95th</b> (June 2006)	125	15	38	<b>178</b>
<b>96th</b> (June 2007)	119	2	57	<b>178</b>
<b>99th</b> (June 2010)	107	0	76	<b>183</b>
<b>100th</b> (June 2011)	109	3	71	<b>183</b>
<b>101st</b> (June 2012)	101	0	84	<b>185</b>
<b>103rd</b> (June 2014)	76	6	103	<b>185</b>
<b>104th</b> (June 2015)	73	0	113	<b>186</b>
<b>106th</b> (June 2017)	9	0	178	<b>187</b>

## Appendix VII. Comments made by the Committee, by country

*The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned.  
This table also lists acknowledgements by the Committee of responses received to direct requests.*

<b>Afghanistan</b>	<p><b>Observations on Conventions Nos 138, 182</b> <i>Direct requests on Conventions Nos 105, 137, 138, 144, 159, 182</i></p> <p><b>Observation on submission</b></p>
<b>Albania</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 129, 143, 182</b> <i>Direct requests on Conventions Nos 29, 81, 97, 105, 122, 129, 138, 143, 156, 167, 176, 181, 182, 187</i></p> <p><b>Observation on submission</b></p>
<b>Algeria</b>	<p><b>Observations on Conventions Nos 87, 94, 100, 111, 120, 122, 138, 155, 167, 182</b> <i>Direct requests on Conventions Nos 87, 95, 97, 99, 100, 111, 122, 127, 182</i> <i>Response received to direct requests on Conventions Nos. 13, 119</i> <i>Direct request on submission</i></p>
<b>Angola</b>	<p><b>Observations on Conventions Nos 88, 98, 105, 182</b> <i>Direct requests on Conventions Nos 29, 69, 73, 74, 98, 108, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Antigua and Barbuda</b>	<p><b>Observations on Conventions Nos 138, 144</b> <i>Direct request on Convention No. 158</i> <i>Response received to direct requests on Conventions Nos. 29, 182</i></p> <p><b>Observation on submission</b></p>
<b>Argentina</b>	<p><b>Observations on Conventions Nos 138, 182</b> <i>Direct requests on Conventions Nos 144, 182, 189</i> <i>Direct request on submission</i></p>
<b>Armenia</b>	<p><i>Direct requests on Conventions Nos 94, 95, 131, 144, 173, 174, 176</i> <i>Direct request on submission</i></p>
<b>Australia</b>	<p><b>Observations on Conventions Nos 111, 122, 156, 158</b> <i>Direct requests on Conventions Nos 88, 111, 122, 137, 158</i></p>
<b>Austria</b>	<p><b>Observation on Convention No. 29</b> <i>Direct requests on Conventions Nos 26, 29, 95, 99</i> <i>Response received to direct requests on Conventions Nos. 173, 187</i> <i>Direct request on submission</i></p>
<b>Azerbaijan</b>	<p><b>Observations on Conventions Nos 105, 113, 126, 138, 148</b> <i>Direct requests on Conventions Nos 29, 95, 105, 120, 131, 138, 144, 156, 182</i> <i>Response received to a direct request on Convention No. 45</i></p> <p><b>Observation on submission</b></p>
<b>Bahamas</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 100, 138, 182</b> <i>Direct requests on Conventions Nos 94, 97, 105, 182, MLC</i></p> <p><b>Observation on submission</b></p>
<b>Bahrain</b>	<p><b>Observations on Conventions Nos 29, 81, 105, 111</b> <i>Direct requests on Conventions Nos 29, 81, 111, 155</i> <i>Response received to direct requests on Conventions Nos. 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Bangladesh</b>	<p><b>Observations on Conventions Nos 29, 81, 87, 98, 105, 144, 182</b> <i>Direct requests on Conventions Nos 29, 81, 105, 182</i></p> <p><b>Observation on submission</b></p>

<b>Barbados</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 97, 98, 100, 111, 115</b></p> <p><i>Direct requests on Conventions Nos 94, 97, 98, 100, 105, 111, 122, 138</i></p> <p><i>Direct request on submission</i></p>
<b>Belarus</b>	<p><b>Observations on Conventions Nos 29, 105</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 122, 144</i></p> <p><i>Response received to a direct request on Convention No. 182</i></p> <p><i>Direct request on submission</i></p>
<b>Belgium</b>	<p><b>Observations on Conventions Nos 100, 111, 138</b></p> <p><i>Direct requests on Conventions Nos 94, 100, 111, 122, 125, 176</i></p>
<b>Belize</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 87, 98, 105</b></p> <p><i>Direct requests on Conventions Nos 29, 88, 97, 100, 105, 111, 138, 141, 144, 154, 156, 182</i></p> <p><b>Observation on submission</b></p>
<b>Benin</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 105</b></p> <p><i>Direct requests on Conventions Nos 81, 98, 105</i></p>
<b>Bolivia, Plurinational State of</b>	<p><b>Observations on Conventions Nos 131, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 138, 182, 189</i></p> <p><b>Observation on submission</b></p>
<b>Bosnia and Herzegovina</b>	<p><b>Observations on Conventions Nos 138, 162</b></p> <p><i>Direct requests on Conventions Nos 29, 94, 105, 119, 131, 136, 138, 139, 144, 148, 151, 155, 156, 158, 161, 162, 174, 176, 182, 184, 187</i></p> <p><i>Direct request on submission</i></p>
<b>Botswana</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 98, 100, 176, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 100, 105, 138, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Brazil</b>	<p><b>Observations on Conventions Nos 98, 111, 139</b></p> <p><i>Direct requests on Conventions Nos 94, 100, 111, 136, 139, 161, 167, 176</i></p> <p><i>Direct request on submission</i></p>
<b>Brunei Darussalam</b>	<p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Bulgaria</b>	<p><b>Observation on Convention No. 94</b></p> <p><i>Direct requests on Conventions Nos 113, 120</i></p> <p><i>Response received to a direct request on Convention No. 182</i></p> <p><i>Direct request on submission</i></p>
<b>Burkina Faso</b>	<p><b>Observations on Conventions Nos 29, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 105, 129, 182</i></p> <p><b>Observation on submission</b></p>
<b>Burundi</b>	<p><b>Observations on Conventions Nos 26, 29, 81, 94, 100, 105, 111, 138, 144, 182</b></p> <p><i>Direct requests on Conventions Nos 12, 17, 29, 42, 100, 105, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Cabo Verde</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 155</b></p> <p><i>Direct requests on Conventions Nos 87, 98, 138, 155</i></p> <p><i>Direct request on submission</i></p>
<b>Cambodia</b>	<p><b>Observations on Conventions Nos 29, 87, 105, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 105, 122, 138, 182</i></p> <p><i>Direct request on submission</i></p>

<b>Cameroon</b>	<p><b>Observations on Conventions Nos 94, 105, 122, 138, 158, 182</b>  <i>Direct requests on Conventions Nos 29, 122, 182</i>  <i>Direct request on submission</i></p>
<b>Canada</b>	<p><b>Observations on Conventions Nos 100, 111, 162</b>  <i>Direct requests on Conventions Nos 29, 100, 108, 111, 144, 162, 182, MLC</i></p>
<b>Central African Republic</b>	<p><b>Observations on Conventions Nos 18, 29, 87, 94, 98, 111, 118, 138, 182</b>  <i>Direct requests on Conventions Nos 17, 29, 87, 88, 98, 100, 105, 111, 118, 144, 158, 182</i>  <b>Observation on submission</b></p>
<b>Chad</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 29, 144, 151, 182</b>  <i>Direct requests on Conventions Nos 29, 98, 105, 138, 182</i>  <b>Observation on submission</b></p>
<b>Chile</b>	<p><b>Observations on Conventions Nos 138, 161, 187</b>  <i>Direct requests on Conventions Nos 161, 182, 187</i>  <b>Observation on submission</b></p>
<b>China</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 122, 138, 182</b>  <i>Direct requests on Conventions Nos 138, 144, 182</i>  <i>Direct request on submission</i></p>
<b>Hong Kong Special Administrative Region</b>	<p><b>Observations on Conventions Nos 105, 144</b>  <i>Direct request on Convention No. 105</i></p>
<b>Macau Special Administrative Region</b>	<p><b>Observations on Conventions Nos 87, 98, 182</b>  <i>Direct request on Convention No. 144</i>  <i>Response received to direct requests on Conventions Nos. 29, 105</i></p>
<b>Colombia</b>	<p><b>Observations on Conventions Nos 138, 162, 170, 174, 182</b>  <i>Direct requests on Conventions Nos 26, 95, 99, 136, 162, 170, 174, 182, 189</i>  <i>Direct request on submission</i></p>
<b>Comoros</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 77, 78, 98, 122, 138</b>  <i>Direct requests on Conventions Nos 29, 87, 98, 105, 138, 182</i>  <b>Observation on submission</b></p>
<b>Congo</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 29, 87, 100, 111, 138, 182</b>  <i>Direct requests on Conventions Nos 29, 87, 98, 100, 105, 111, 138, 144, 182</i>  <b>Observation on submission</b></p>
<b>Cook Islands</b>	<p><b>General observation</b></p>
<b>Costa Rica</b>	<p><b>Observations on Conventions Nos 94, 144, 182</b>  <i>Direct requests on Conventions Nos 138, 182, 189</i></p>
<b>Côte d'Ivoire</b>	<p><b>Observation on Convention No. 144</b>  <i>Direct requests on Conventions Nos 29, 96, 105, 159</i>  <i>Direct request on submission</i></p>
<b>Croatia</b>	<p><b>Observations on Conventions Nos 98, 156</b>  <i>Direct requests on Conventions Nos 87, 98, 122, 156, 159, 182, MLC</i>  <i>Response received to direct requests on Conventions Nos. 90, 138</i>  <b>Observation on submission</b></p>
<b>Cuba</b>	<p><i>Direct requests on Conventions Nos 29, 94, 95, 97, 105, 122, 131, 137, 138, 155, 182, 187</i>  <i>Response received to a direct request on Convention No. 17</i></p>
<b>Cyprus</b>	<p><i>Direct requests on Conventions Nos 114, 158, 160</i>  <i>Response received to direct requests on Conventions Nos. 119, 138, 182</i></p>
<b>Czech Republic</b>	<p><b>Observation on Convention No. 122</b>  <i>Direct requests on Conventions Nos 29, 102, 105, 128, 130</i>  <i>Response received to direct requests on Conventions Nos. 138, 182</i></p>

<b>Democratic Republic of the Congo</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 87, 94, 98, 105, 138, 144, 158, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 88, 98, 105, 135, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Denmark</b>	<p><i>Direct requests on Conventions Nos 102, 115, 118, 122, 130</i></p> <p><i>Direct request on submission</i></p>
Greenland	<p><i>Direct request on Convention No. 122</i></p>
<b>Djibouti</b>	<p><b>Observations on Conventions Nos 87, 94, 122, 138, 144, 182</b></p> <p><i>Direct requests on Conventions Nos 13, 29, 81, 87, 88, 98, 100, 105, 111, 115, 120, 138, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Dominica</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 16, 29, 94, 138, 147</b></p> <p><i>Direct requests on Conventions Nos 8, 29, 87, 97, 100, 105, 111, 135, 144, 169, 182</i></p> <p><b>Observation on submission</b></p>
<b>Dominican Republic</b>	<p><b>Observations on Conventions Nos 122, 138, 144, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 88, 105, 138, 159, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Ecuador</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct request on Convention No. 87</i></p> <p><i>Direct request on submission</i></p>
<b>Egypt</b>	<p><b>Observations on Conventions Nos 29, 87, 94, 105, 118, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 115, 137, 138, 144, 182</i></p>
<b>El Salvador</b>	<p><b>Observations on Conventions Nos 98, 144, 182</b></p> <p><i>Direct requests on Conventions Nos 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Equatorial Guinea</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 87, 98, 111</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Eritrea</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 87, 98, 105, 138</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 100, 105, 111, 138</i></p> <p><i>Direct request on submission</i></p>
<b>Estonia</b>	<p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 29, 122, 138, 174, 182</i></p>
<b>Ethiopia</b>	<p><b>Observations on Conventions Nos 100, 111, 156</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 156, 158</i></p>
<b>Fiji</b>	<p><b>Observations on Conventions Nos 105, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 122, 138, 169, 182, MLC</i></p> <p><b>Observation on submission</b></p>
<b>Finland</b>	<p><i>Direct requests on Conventions Nos 29, 137</i></p> <p><i>Response received to a direct request on Convention No. 182</i></p>
<b>France</b>	<p><b>Observations on Conventions Nos 94, 97, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 97, 100, 102, 111, 137, 158</i></p> <p><i>Response received to a direct request on Convention No. 182</i></p>
French Polynesia	<p><i>Direct requests on Conventions Nos 29, 94, 125, 126, 144</i></p>
New Caledonia	<p><b>Observation on Convention No. 144</b></p> <p><i>Direct requests on Conventions Nos 81, 94, 122, 129</i></p>
<b>Gabon</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 87, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 87, 98, 100, 111, 122, 158</i></p> <p><b>Observation on submission</b></p>

<b>Gambia</b>	<p>General observation</p> <p><b>Observations on Conventions Nos 87, 98, 111</b></p> <p><i>Direct requests on Conventions Nos 29, 87, 100, 105, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Georgia</b>	<p><b>Observations on Conventions Nos 87, 98, 100, 111</b></p> <p><i>Direct requests on Conventions Nos 87, 98, 100, 111, 122</i></p> <p><i>Direct request on submission</i></p>
<b>Germany</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 26, 81, 99, 102, 121, 125, 128, 129, 130, 170, 176, 187</i></p> <p><i>Response received to a direct request on Convention No. 148</i></p> <p><i>Direct request on submission</i></p>
<b>Ghana</b>	<p><b>Observations on Conventions Nos 94, 98, 182</b></p> <p><i>Direct requests on Conventions Nos 87, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Greece</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 126, 160</i></p>
<b>Grenada</b>	<p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 87, 94, 97, 100, 111</i></p> <p><b>Observation on submission</b></p>
<b>Guatemala</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 129</b></p> <p><i>Direct requests on Conventions Nos 81, 129</i></p>
<b>Guinea</b>	<p><b>Observations on Conventions Nos 87, 94, 138</b></p> <p><i>Direct requests on Conventions Nos 29, 98, 105, 122, 138</i></p> <p><b>Observation on submission</b></p>
<b>Guinea - Bissau</b>	<p>General observation</p> <p><b>Observation on Convention No. 98</b></p> <p><i>Direct requests on Conventions Nos 29, 68, 69, 73, 74, 88, 91, 100, 105, 108, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Guyana</b>	<p>General observation</p> <p><b>Observations on Conventions Nos 29, 98, 138</b></p> <p><i>Direct requests on Conventions Nos 2, 87, 94, 97, 142, 144, 166, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Haiti</b>	<p>General observation</p> <p><b>Observations on Conventions Nos 1, 14, 30, 87, 98, 106, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 77, 78, 87, 100, 111, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Honduras</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct request on Convention No. 122</i></p>
<b>Hungary</b>	<p><b>Observations on Conventions Nos 87, 98, 111</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 122</i></p> <p><i>Response received to a direct request on Convention No. 115</i></p> <p><b>Observation on submission</b></p>
<b>Iceland</b>	<p><b>Observations on Conventions Nos 100, 111</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 122, 156</i></p> <p><i>Response received to a direct request on Convention No. 87</i></p>
<b>India</b>	<p><b>Observations on Conventions Nos 81, 100, 111, 122</b></p> <p><i>Direct requests on Conventions Nos 26, 81, 100, 111, 142, 144</i></p>
<b>Indonesia</b>	<p><b>Observations on Conventions Nos 87, 98</b></p>
<b>Iran, Islamic Republic of</b>	<p><b>Observations on Conventions Nos 100, 111</b></p> <p><i>Direct requests on Conventions Nos 100, 122</i></p> <p><b>Observation on submission</b></p>

<b>Iraq</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 94, 98</b></p> <p><i>Direct requests on Conventions Nos 8, 22, 23, 92, 115, 122, 139, 146, 147</i></p> <p><b>Observation on submission</b></p>
<b>Ireland</b>	<p><b>Observations on Conventions Nos 98, 122</b></p> <p><i>Direct request on Convention No. 189</i></p> <p><i>Direct request on submission</i></p>
<b>Israel</b>	<p><b>Observations on Conventions Nos 97, 100</b></p> <p><i>Direct requests on Conventions Nos 87, 97, 100</i></p>
<b>Italy</b>	<p><b>Observations on Conventions Nos 111, 137, 143</b></p> <p><i>Direct requests on Conventions Nos 94, 97, 100, 111, 122, 143</i></p>
<b>Jamaica</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 94, 98, 100</b></p> <p><i>Direct requests on Conventions Nos 87, 97, 100, 111, 122</i></p> <p><b>Observation on submission</b></p>
<b>Japan</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 100, 115, 122, 156, 159</b></p> <p><i>Direct requests on Conventions Nos 81, 100, 122, 156, 181</i></p>
<b>Jordan</b>	<p><b>Observations on Conventions Nos 98, 100</b></p> <p><i>Direct requests on Conventions Nos 100, 122</i></p> <p><b>Observation on submission</b></p>
<b>Kazakhstan</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 98, 122</i></p> <p><b>Observation on submission</b></p>
<b>Kenya</b>	<p><b>Observations on Conventions Nos 105, 143</b></p> <p><i>Direct requests on Conventions Nos 29, 94, 97, 98, 100, 105, 111, 137, 143</i></p> <p><i>Direct request on submission</i></p>
<b>Kiribati</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 98</b></p> <p><i>Direct requests on Conventions Nos 87, 98, 100, 111, MLC</i></p> <p><b>Observation on submission</b></p>
<b>Korea, Republic of</b>	<p><b>Observations on Conventions Nos 100, 122</b></p> <p><i>Direct requests on Conventions Nos 100, MLC</i></p>
<b>Kuwait</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 87, 98</i></p> <p><b>Observation on submission</b></p>
<b>Kyrgyzstan</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 138</b></p> <p><i>Direct requests on Conventions Nos 87, 97, 98, 100, 105, 111, 122, 124, 138, 142, 144, 149, 154, 159, 160</i></p> <p><b>Observation on submission</b></p>
<b>Lao People's Democratic Republic</b>	<p><b>Observation on Convention No. 138</b></p> <p><i>Direct requests on Conventions Nos 29, 111, 138, 144, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Latvia</b>	<p><b>Observations on Conventions Nos 100, 111</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 122, 158</i></p> <p><i>Response received to a direct request on Convention No. 98</i></p>
<b>Lebanon</b>	<p><b>Observations on Conventions Nos 29, 77, 78, 100, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 59, 77, 78, 88, 100, 105, 138, 142, 159, 182</i></p> <p><i>Response received to a direct request on Convention No. 45</i></p> <p><b>Observation on submission</b></p>

<b>Lesotho</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 87, 100, 111</i> <b>Observation on submission</b>
<b>Liberia</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 98, 111, 112, 113, 114</b> <i>Direct requests on Conventions Nos 108, 111</i> <b>Observation on submission</b>
<b>Libya</b>	<i>General direct request</i> <b>Observation on Convention No. 122</b> <i>Direct requests on Conventions Nos 87, 96, 98</i> <b>Observation on submission</b>
<b>Lithuania</b>	<i>Direct requests on Conventions Nos 87, 98, 115, 122</i>
<b>Luxembourg</b>	<b>Observation on Convention No. 111</b> <i>Direct requests on Conventions Nos 87, 96, 100, 102, 111, 158, MLC</i>
<b>Madagascar</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 98, 122, 124</b> <i>Direct requests on Conventions Nos 12, 88, 97, 159</i> <i>Direct request on submission</i>
<b>Malawi</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 144, 182</b> <i>Direct requests on Conventions Nos 97, 98, 158, 159, 182</i> <b>Observation on submission</b>
<b>Malaysia</b>	<i>General direct request</i> <b>Observations on Conventions Nos 98, 100</b> <i>Direct requests on Conventions Nos 100, 144, MLC</i> <b>Observation on submission</b>
Peninsular	<i>General direct request</i> <b>Observation on Convention No. 19</b>
Sabah	<b>General observation</b> <b>Observation on Convention No. 97</b> <i>Direct requests on Conventions Nos 94, 97</i>
Sarawak	<i>General direct request</i> <b>Observation on Convention No. 19</b> <i>Direct request on Convention No. 94</i>
<b>Maldives, Republic of</b>	<b>General observation</b> <i>Direct requests on Conventions Nos 29, 87, 98, 105, 138, 182</i> <b>Observation on submission</b>
<b>Mali</b>	<b>Observations on Conventions Nos 98, 100, 111</b> <i>Direct requests on Conventions Nos 19, 87, 100, 111</i> <i>Direct request on submission</i>
<b>Malta</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 2, 87, 96, 117, 159</i> <b>Observation on submission</b>
<b>Marshall Islands</b>	<i>Direct requests on Conventions Nos 185, MLC</i> <i>Direct request on submission</i>
<b>Mauritania</b>	<b>Observations on Conventions Nos 29, 81, 87, 114</b> <i>Direct requests on Conventions Nos 81, 98</i> <i>Direct request on submission</i>
<b>Mauritius</b>	<b>Observations on Conventions Nos 87, 94, 98</b> <i>Direct requests on Conventions Nos 87, 137, MLC</i>

<b>Mexico</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 155</b></p> <p><i>Direct requests on Conventions Nos 87, 90, 155</i></p> <p><i>Direct request on submission</i></p>
<b>Moldova, Republic of</b>	<p><b>Observations on Conventions Nos 81, 129</b></p> <p><i>Direct requests on Conventions Nos 87, 92, 98, 160</i></p> <p><b>Observation on submission</b></p>
<b>Mongolia</b>	<p><b>Observations on Conventions Nos 100, 111</b></p> <p><i>Direct requests on Conventions Nos 87, 98, 100, 111, 122, 123, 144, 159</i></p> <p><i>Direct request on submission</i></p>
<b>Montenegro</b>	<p><b>Observations on Conventions Nos 98, 100</b></p> <p><i>Direct requests on Conventions Nos 87, 98, 100, 111, 122, 140, 156, 158</i></p>
<b>Morocco</b>	<i>Direct requests on Conventions Nos 98, 100, 122, 158</i>
<b>Mozambique</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 87, 98, 122</b></p> <p><i>Direct requests on Conventions Nos 87, 98</i></p> <p><b>Observation on submission</b></p>
<b>Myanmar</b>	<p><b>Observations on Conventions Nos 6, 87</b></p> <p><i>Direct request on Convention No. 87</i></p>
<b>Namibia</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 98, 158</i></p> <p><i>Response received to a direct request on Convention No. 87</i></p> <p><i>Direct request on submission</i></p>
<b>Nepal</b>	<p><b>Observation on Convention No. 98</b></p> <p><i>Direct request on submission</i></p>
<b>Netherlands</b>	<p><b>Observations on Conventions Nos 81, 94, 98, 100, 111, 129, 156</b></p> <p><i>Direct requests on Conventions Nos 81, 87, 100, 102, 111, 121, 128, 129, 130, 156, 159</i></p>
Aruba	<p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 87, 94, 122, 140, 142</i></p>
Caribbean Part of the Netherlands Curaçao	<p><i>Direct requests on Conventions Nos 87, 94, 122</i></p> <p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 87, 94, 122, 144</i></p>
Sint Maarten	<i>Direct requests on Conventions Nos 87, 94, 122</i>
<b>New Zealand</b>	<p><b>Observations on Conventions Nos 100, 111, 122</b></p> <p><i>Direct requests on Conventions Nos 98, 100, 111</i></p>
Tokelau	<i>Direct requests on Conventions Nos 100, 111</i>
<b>Nicaragua</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 87, 98, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 138, 169, 182, 189</i></p> <p><i>Direct request on submission</i></p>
<b>Niger</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 87, 100, 111, 156, 158</i></p> <p><i>Direct request on submission</i></p>
<b>Nigeria</b>	<p><b>Observations on Conventions Nos 87, 88, 97, 98, 123, 138, 144</b></p> <p><i>Direct requests on Conventions Nos 94, 97, 100, 105, 137, 138</i></p> <p><i>Direct request on submission</i></p>
<b>Norway</b>	<p><b>Observations on Conventions Nos 94, 137, 156</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 122, 156</i></p>
<b>Oman</b>	<i>Direct request on submission</i>

<b>Pakistan</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 81, 98, 100, 105, 111, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 81, 100, 105, 111, 138, 144, 182</i></p> <p><b>Observation on submission</b></p>
<b>Palau</b>	<p><i>Direct request on submission</i></p>
<b>Panama</b>	<p><b>Observation on Convention No. 94</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 138, 144, 182, MLC</i></p> <p><i>Direct request on submission</i></p>
<b>Papua New Guinea</b>	<p><b>Observations on Conventions Nos 138, 158, 182</b></p> <p><i>Direct requests on Conventions Nos 87, 100, 105, 122, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Paraguay</b>	<p><b>Observations on Conventions Nos 77, 78, 79, 90, 169</b></p> <p><i>Direct requests on Conventions Nos 59, 169, 189</i></p> <p><i>Direct request on submission</i></p>
<b>Peru</b>	<p><b>Observations on Conventions Nos 29, 144, 159, 169</b></p> <p><i>Direct requests on Conventions Nos 29, 77, 78, 105, 169</i></p> <p><i>Direct request on submission</i></p>
<b>Philippines</b>	<p><b>Observation on Convention No. 94</b></p> <p><i>Direct request on Convention No. 144</i></p>
<b>Poland</b>	<p><b>Observations on Conventions Nos 29, 144</b></p> <p><i>Direct requests on Conventions Nos 29, 137</i></p> <p><i>Response received to a direct request on Convention No. 113</i></p>
<b>Portugal</b>	<p><b>Observations on Conventions Nos 6, 81, 129, 142, 144, 158, 162</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 129, 155, 162</i></p>
<b>Qatar</b>	<p><b>Observation on Convention No. 81</b></p> <p><i>Direct request on Convention No. 81</i></p>
<b>Romania</b>	<p><i>General direct request</i></p> <p><i>Direct requests on Conventions Nos 95, 131, 137, 144</i></p>
<b>Russian Federation</b>	<p><b>Observations on Conventions Nos 98, 100</b></p> <p><i>Direct requests on Conventions Nos 140, 144</i></p> <p><i>Direct request on submission</i></p>
<b>Rwanda</b>	<p><b>Observations on Conventions Nos 87, 94, 100, 105, 111</b></p> <p><i>Direct requests on Conventions Nos 11, 29, 87, 100, 111, 122, 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Saint Kitts and Nevis</b>	<p><i>Direct request on Convention No. 144</i></p> <p><b>Observation on submission</b></p>
<b>Saint Lucia</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 8, 87, 98, 100</b></p> <p><i>Direct requests on Conventions Nos 5, 29, 87, 100, 108, 111, 154, 158, 182</i></p> <p><b>Observation on submission</b></p>
<b>Saint Vincent and the Grenadines</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 100, 182</b></p> <p><i>Direct requests on Conventions Nos 94, 100, 105, 108, 111, 122, 138, 144, 182</i></p> <p><b>Observation on submission</b></p>
<b>Samoa</b>	<p><b>Observations on Conventions Nos 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 105, 138, 182, MLC</i></p> <p><b>Observation on submission</b></p>
<b>San Marino</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 160</b></p> <p><i>Direct requests on Conventions Nos 100, 140, 143, 156, 159</i></p> <p><i>Direct request on submission</i></p>

<b>Sao Tome and Principe</b>	<b>Observation on Convention No. 159</b> <i>Direct requests on Conventions Nos 29, 138, 144, 182</i> <i>Response received to a direct request on Convention No. 105</i> <i>Direct request on submission</i>
<b>Saudi Arabia</b>	<i>Direct request on submission</i>
<b>Senegal</b>	<b>Observation on Convention No. 100</b> <i>Direct requests on Conventions Nos 100, 144</i>
<b>Serbia</b>	<b>General observation</b> <b>Observation on Convention No. 144</b> <i>Direct requests on Conventions Nos 29, 105, 156, 182</i> <i>Direct request on submission</i>
<b>Seychelles</b>	<i>Direct requests on Conventions Nos 144, MLC</i> <b>Observation on submission</b>
<b>Sierra Leone</b>	<i>General direct request</i> <b>Observations on Conventions Nos 29, 88, 98, 125, 138, 144</b> <i>Direct requests on Conventions Nos 26, 87, 94, 95, 105, 126, 138, 182</i> <b>Observation on submission</b>
<b>Singapore</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 29, 94, 100, 144</i> <i>Direct request on submission</i>
<b>Slovakia</b>	<i>Direct requests on Conventions Nos 140, 144</i>
<b>Slovenia</b>	<i>Direct requests on Conventions Nos 100, 111, 114, 143, 144, 158</i> <i>Response received to a direct request on Convention No. 182</i>
<b>Solomon Islands</b>	<b>General observation</b> <i>Direct requests on Conventions Nos 16, 29, 94, 100, 105, 108, 111, 138, 182</i> <b>Observation on submission</b>
<b>Somalia</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98</b> <i>Direct request on Convention No. 182</i> <b>Observation on submission</b>
<b>South Africa</b>	<b>Observation on Convention No. 111</b> <i>Direct requests on Conventions Nos 111, 144</i> <i>Direct request on submission</i>
<b>South Sudan</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 100, 111</i> <i>Direct request on submission</i>
<b>Spain</b>	<b>Observations on Conventions Nos 88, 94, 122, 144</b> <i>Direct requests on Conventions Nos 77, 78, 131, 159</i>
<b>Sri Lanka</b>	<b>Observations on Conventions Nos 29, 138, 182</b> <i>Direct requests on Conventions Nos 11, 29, 105, 144, 182</i>
<b>Sudan</b>	<b>Observations on Conventions Nos 29, 105, 138, 182</b> <i>Direct requests on Conventions Nos 29, 105, 138, 182</i> <i>Direct request on submission</i>
<b>Suriname</b>	<b>Observations on Conventions Nos 17, 42, 94, 118, 144</b> <i>Direct requests on Conventions Nos 19, 42, 122, 181</i> <i>Direct request on submission</i>
<b>Swaziland</b>	<b>Observations on Conventions Nos 138, 144</b> <i>Direct requests on Conventions Nos 90, 94</i> <b>Observation on submission</b>

<b>Sweden</b>	<b>Observations on Conventions Nos 158, 168</b> <i>Direct requests on Conventions Nos 81, 102, 121, 128, 129, 130, 137, 168</i> <i>Direct request on submission</i>
<b>Switzerland</b>	<i>Direct requests on Conventions Nos 102, 128, 189</i>
<b>Syrian Arab Republic</b>	<b>Observations on Conventions Nos 29, 87, 105, 138, 182</b> <i>Direct requests on Conventions Nos 29, 94, 105, 115, 144, 182</i> <b>Observation on submission</b>
<b>Tajikistan</b>	<i>Direct requests on Conventions Nos 77, 78, 79, 90, 97, 115, 143, 144, 149</i> <i>Response received to a direct request on Convention No. 45</i> <i>Direct request on submission</i>
<b>Tanzania, United Republic of</b>	<b>Observations on Conventions Nos 29, 94, 144</b> <i>Direct requests on Conventions Nos 29, 105, 137</i> <i>Response received to a direct request on Convention No. 59</i> <i>Direct request on submission</i>
Tanzania. Zanzibar	<i>Direct request on Convention No. 85</i>
<b>Thailand</b>	<b>Observations on Conventions Nos 29, 105, 138</b> <i>Direct requests on Conventions Nos 29, 105, 138</i> <i>Direct request on submission</i>
<b>The former Yugoslav Republic of Macedonia</b>	<i>General direct request</i> <b>Observations on Conventions Nos 111, 182</b> <i>Direct requests on Conventions Nos 29, 94, 97, 100, 111, 138, 143, 144, 156, 158, 182</i> <b>Observation on submission</b>
<b>Timor-Leste</b>	<b>General observation</b> <i>Direct requests on Conventions Nos 29, 87, 98, 182</i> <b>Observation on submission</b>
<b>Togo</b>	<i>Direct requests on Conventions Nos 81, 129, 144, 150</i> <b>Observation on submission</b>
<b>Trinidad and Tobago</b>	<i>General direct request</i> <b>Observations on Conventions Nos 100, 111, 125, 138, 182</b> <i>Direct requests on Conventions Nos 19, 97, 100, 111, 122, 138, 144, 182</i> <i>Direct request on submission</i>
<b>Tunisia</b>	<b>Observations on Conventions Nos 100, 111, 182</b> <i>Direct requests on Conventions Nos 18, 29, 100, 107, 111, 138, 151, 154, 182</i> <i>Direct request on submission</i>
<b>Turkey</b>	<b>Observations on Conventions Nos 29, 98, 135, 138, 144, 182</b> <i>Direct requests on Conventions Nos 29, 105, 182</i> <i>Response received to direct requests on Conventions Nos. 77, 123</i>
<b>Turkmenistan</b>	<i>Direct request on submission</i>
<b>Tuvalu</b>	<i>Direct request on Convention No. MLC</i> <b>Observation on submission</b>
<b>Uganda</b>	<i>General direct request</i> <b>Observations on Conventions Nos 105, 122, 138, 144, 182</b> <i>Direct requests on Conventions Nos 17, 94, 100, 111, 123, 124, 138, 143, 158, 159, 182</i> <i>Response received to a direct request on Convention No. 45</i> <i>Direct request on submission</i>
<b>Ukraine</b>	<b>Observations on Conventions Nos 81, 129</b> <i>Direct requests on Conventions Nos 77, 78, 81, 129, 158</i> <i>Response received to a direct request on Convention No. 124</i>
<b>United Arab Emirates</b>	<b>Observation on submission</b>

<b>United Kingdom</b>	<b>Observation on Convention No. 144</b> <i>Direct request on Convention No. MLC</i> <i>Response received to a direct request on Convention No. 124</i>
<b>Anguilla</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 87, 94</i>
<b>Bermuda</b>	<b>Observation on Convention No. 94</b>
<b>British Virgin Islands</b>	<i>Direct request on Convention No. 94</i>
<b>Gibraltar</b>	<i>Direct request on Convention No. MLC</i>
<b>Guernsey</b>	<i>Direct requests on Conventions Nos 114, 122</i>
<b>Jersey</b>	<i>Direct requests on Conventions Nos 8, 22, 74</i>
<b>Montserrat</b>	<i>Direct request on Convention No. 8</i>
<b>United States</b>	<b>Observation on Convention No. 105</b> <i>Direct request on Convention No. 144</i>
<b>Uruguay</b>	<i>Direct requests on Conventions Nos 29, 113, 137, 144</i> <i>Direct request on submission</i>
<b>Uzbekistan</b>	<i>Direct request on Convention No. 122</i> <i>Direct request on submission</i>
<b>Vanuatu</b>	<b>General observation</b> <i>Direct requests on Conventions Nos 29, 87, 98, 100, 105, 111, 182</i> <b>Observation on submission</b>
<b>Venezuela, Bolivarian Republic of</b>	<b>Observations on Conventions Nos 6, 26, 87, 88, 95, 100, 111, 122, 143, 144, 158</b> <i>Direct requests on Conventions Nos 95, 97, 100, 111, 143</i> <i>Direct request on submission</i>
<b>Viet Nam</b>	<b>General observation</b> <b>Observations on Conventions Nos 100, 111</b> <i>Direct requests on Conventions Nos 100, 111, 124, 144, MLC</i>
<b>Yemen</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 94, 98, 111, 138, 182</b> <i>Direct requests on Conventions Nos 29, 100, 105, 111, 122, 138, 144, 156, 158, 182</i> <b>Observation on submission</b>
<b>Zambia</b>	<b>Observations on Conventions Nos 98, 138</b> <i>Direct requests on Conventions Nos 138, 144</i> <b>Observation on submission</b>
<b>Zimbabwe</b>	<i>Direct request on Convention No. 144</i>